

Marshall Day Addresses

At Lexington, Kentucky



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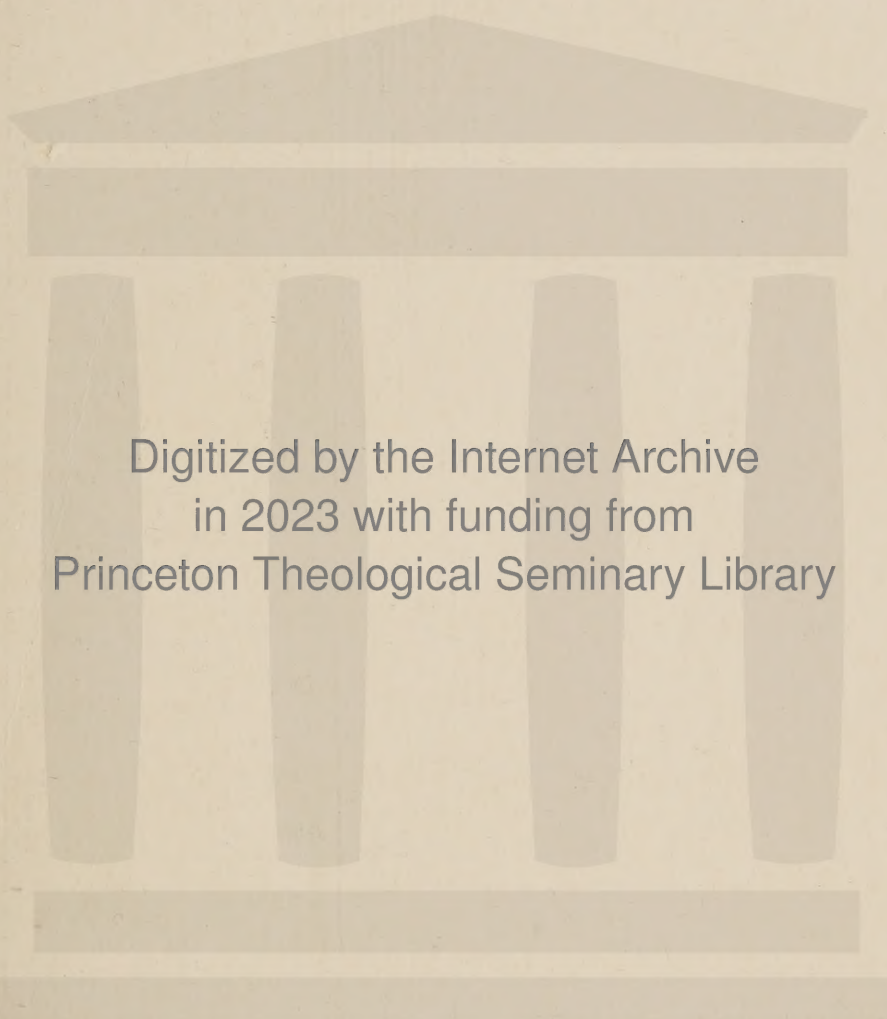
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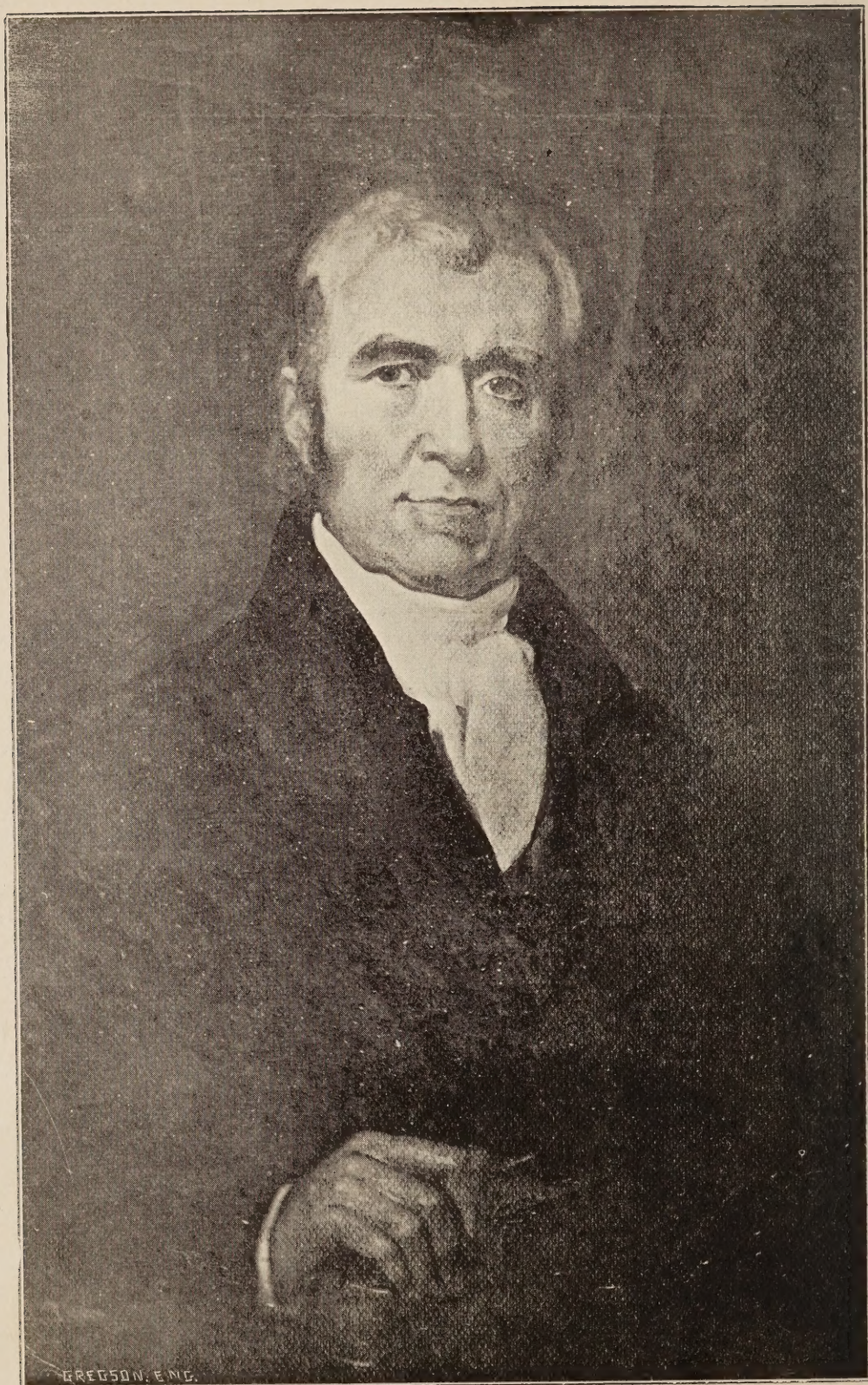
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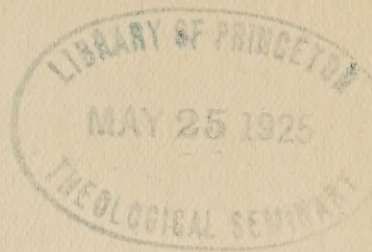
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From photograph of portrait by Jas. R. Lambdin, now owned by
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JOHN MARSHALL.

Warfield Library



ADDRESSES

Delivered in Honor of

John Marshall Day,

By Members of the

Fayette County Bar

Fayette County bar association.

February 4, 1901,

Lexington, Kentucky.

John Marshall Day Program.

Morning Exercises.

Chairman, Judge Watts Parker.

Invocation,.....Bishop Lewis W. Burton.
Introductory Address,.....Col. W. C. P. Breckinridge.
JOHN MARSHALL, the Great Chief Justice,.....J. H. Beauchamp.

Evening Exercises.

Chairman, Judge Watts Parker.

The Early Bar of Fayette County,.....Samuel M. Wilson.
The Bench of Fayette County prior to 1860,.....Charles Kerr.
Personal recollections of the Fayette Bar..... J. Soule Smith.

Commemorative Exercises to be held in the Fayette Circuit Court Room, commencing in the morning at half-past ten and in the evening at half-past seven o'clock.

USHERS:—Messrs. Geo. S. Shanklin, R. E. Lee Morgan, P. M. Gastineau, Wm. Worthington, Geo. R. Hunt.

PREFATORY NOTE.

"John Marshall Day" owed its origin to the initiative of the Hon. Mr. Adolph Moses of the Chicago Bar. Acting under his lead, the Illinois State Bar Association, at its annual meeting of 1899, unanimously adopted a resolution proposing that Monday, February 4, 1901, be observed throughout the Union as "John Marshall Day," in honor of the first centennial of the installation of that eminent jurist as Chief Justice of the United States. This resolution was presented to the American Bar Association at its twenty-second annual meeting held in Buffalo, New York, in August, 1899, and met with a prompt and hearty endorsement by that body. Committees were appointed, resolutions were passed, and all the necessary steps were taken to carry out the original design and to secure national recognition and celebration of the day. This action was confirmed and reinforced by the American Bar Association at its last annual meeting, held at Saratoga Springs, New York, in August, 1900.

It was early determined by the Lexington Bar that its members should not be behindhand in their support of this praiseworthy project, and, accordingly, a committee, consisting of those members of the local bar who were also members of the American Bar Association, was in due time appointed to arrange for the proposed celebration. The exercises as actually carried out were not entirely in accord with the program as first prepared and reported by the committee, but the celebration as a whole was not, on that account, any the less satisfactory and successful. As provided by the committee, an introductory address on "The Relation of the Bar to Society and the State" was to have been delivered by Col. John R. Allen at the morning session, but, at the last moment, he was called away to Chicago on urgent business and could not fill the appointment. His place, however, was supplied by Col. Wm. C. P. Breckinridge, who kindly consented, even upon such short notice, to deliver the opening address—not, however, upon the topic which had been assigned Col. Allen. To the regret of the committee and, we believe we may say, of the entire bar, the closing address promised by Mr. J. Soule Smith, giving his "Personal Recollections of the Fayette Bar," had to be omitted on account of the sudden illness of the honorable gentleman. The remainder of the program was carried out as originally planned.

Thanks to the appreciative interest and good taste of Mrs. Fannie B. Bullock, the Circuit Court room was most attractively decorated and the effect produced by flags and flowers was greatly heightened by the presence of a handsome oil portrait of Chief Justice Marshall, which had been loaned for the occasion by Major T. J. Carson, of Fayette County. It is worthy of note that this portrait was painted from life by the celebrated artist, James R. Lambdin, of Philadelphia, who painted many portraits at Washington, including several of the presidents and a likeness of John Marshall which now hangs in the United States Supreme Court room.

The Fayette Circuit Court met as usual on the morning of February 4, 1901, and after the court had called for and disposed of motions in matters of a pressing nature, Mr. George C. Webb, of the Arrangements Committee, arose and moved the court that it adjourn forthwith out of respect to the memory of John Marshall and in honor of the day set apart for the purpose of doing him homage, and that this fact be noted of record on the Order Book of the court. This motion was immediately granted, and the court was thereupon ordered to stand adjourned in commemoration of the one-hundredth anniversary of John Marshall's inauguration as Chief Justice of the Supreme Court of the United States. Commencing promptly at half-past ten o'clock, the morning exercises proceeded and were concluded at about 1 p. m. The exercises at night occupied about two hours, commencing at half-past seven o'clock. At the conclusion of the program, upon motion of Judge J. R. Morton, a unanimous vote of thanks was tendered the gentlemen who had contributed to the day's entertainment and also to Mrs. Bullock for her kindness in providing the decorations.

At a bar meeting held in the Circuit Court room, on Tuesday morning, February 5, 1901, a resolution was offered by Mr. C. J. Bronston, authorizing the Committee on Arrangements to have the John Marshall Day addresses published in book form. This resolution was carried unanimously, and the undersigned members of the Committee on Arrangements have in this volume undertaken to carry out the wishes of their constituents and commend the work as a fitting memorial of the celebration conducted by the Lexington Bar.

J. R. MORTON, <i>Chairman</i> ,	} Committee.
JOHN R. ALLEN,	
C. SUYDAM SCOTT,	
GEO. C. WEBB,	

JUDGE PARKER'S ADDRESS.

The morning exercises were opened by Judge Watts Parker, who presided, with the following remarks :

A century and a quarter ago a small band of Virginians were gathered about a spring within bow-shot of where we now stand, when the tidings reached them of a battle fought in the cause of American liberty. Straightway, in commemoration of the event, they called this place—then a tangled wilderness—now a fair city—"Lexington."

A part of Virginia then, her offspring now, it is meet that we, in this historic spot, should be among the first to honor a gifted son of that wondrous Commonwealth.

Glorious Old Virginia—mother of statesmen, of jurists and of warriors ! From the time of him, who was "first in war, first in peace, and first in the hearts of his countrymen," to the coming and passing of the matchless Lee, the pages of her history have been illumined by the deeds of her mighty sons. In the front rank of Virginia's immortal dead, stands the man in whose honor we meet today. Endowed with a patriotism lofty as that of Washington—with heart as strong and life as pure as the stainless Lee—he laid his guiding hand upon the helm of our untried Ship of State, and essayed to steer her safely upon an unknown sea.

How well he succeeded, how clearly the great navigator saw, and with what skill he avoided each peril in the path of the craft he directed, let those attest who, representing more than seventy millions of people, this day publicly do homage to the name and memory of John Marshall, the great Chief Justice.

THE INVOCATION.

Bishop Lewis W. Burton then offered the following invocation :

O God, Thou art the Judge of all the earth ! 'Justice and judgment are the habitation of Thy throne ; mercy and truth shall go before Thy face.' We thank Thee for the good example of Thy servant, whom we remember before Thee this day. We praise Thee that, as one of the chief of our fathers, he was a man fearing Thee, and that he finally accepted Thy Son as his divine Savior. To Thee did he owe his well-balanced mind, his intuitive insight into the eternal principles of righteousness, his ability to recognize equity, when others were in doubt, and his steadfastness in the pursuit of justice even in the face of opposition.

Thou didst raise him up to these, Thy people, that, in erecting the foundation of our republic, he might 'lay judgment to the line and righteousness to the plummet.'

And now we pray Thee that his influence may be potent over this whole land in this, our day, in reviving among us the love of justice and the practice of righteousness. May the law of our God be in our hearts. Incline our hearts to keep Thy law. May we reverence those set to judge us ; and, that they may be worthy of our reverence, enlarge their human limitations ; lessen their natural infirmities, and keep them free from ignorance, prejudice, partisanship and corruption. May our people be a people loving truth and order, respecting authority, obedient to law, holding sacred their own and others' rights, and treasuring their priceless, blood-bought inheritance of freedom. May they love Thee, the Lord their God, with all their heart, with all their soul, and with all their mind, and their neighbors as themselves.

And finally, when we appear before the Judge of the quick and the dead, to be rewarded or punished according to the deeds done in the body, may we be justified in Thy sight, for the sake of Jesus, who shed His blood to wash away our guilt, and who was obedient to the law, that we might find our righteousness in Him. And in His name we offer all these petitions unto Thee, and pray Thee to hear us for Christ's sake. Amen!

INTRODUCTORY ADDRESS.

**Col. W. C. P. Breckinridge then delivered the following
Introductory Address.**

Mr. Chairman, Ladies and Gentlemen, and my Fellow-members of the Fayette Bar :

The duty which I am now to perform was assigned to my brother and associate, Col. John R. Allen, who has been called to Chicago, and at the request of the Committee, I take his place.

The duty assigned to me is to make an introductory address and merely to lay before you the chief objects of our celebration.

Topics germane to this day are very numerous and full of profound interest. At the request of the National Bar Association the various bars of the Union are assembled to do honor to the memory of John Marshall, as the great Chief Justice. It is the centennial anniversary of the assumption of his duties under his appointment by John Adams, as Chief Justice of the Supreme Court of the United States.

We in Kentucky have a peculiar personal interest in John Marshall and all that pertains to him as an individual. The Marshalls of Kentucky

have played a larger part in the history of this State than of any other, even of Virginia, and perhaps I might say a more prominent part in this State than any other family. Those who have become eminent in their services to the State of Kentucky, or by reason of their prominence here, have been given an opportunity to serve the Republic, are more numerous and more eminent than the Marshalls of Virginia, except the great Chief Justice himself. The very foundations of our civil fabric were laid in part by the hands of the Marshalls, and its great and noble principles have been upheld, advocated, defended and adorned by members of that family, either bearing its name, or akin to it in blood, up to the present day. This bar has today no names upon its rolls more honorable and illustrious, unless it is the name of Henry Clay, than of those who were akin to the Chief Justice. I know that we are apt in looking back upon the earlier days to say, "There were giants in those days," and this is true as to this particular bar; and among the most eloquent of those earlier lawyers was Joseph Hamilton Daviess, who was held to be the rival of Henry Clay, and the equal of John Allen. He early fell in the forefront of battle in defense of his country. His wife was a sister of John Marshall.

Our early historian who was elected Senator over John Breckinridge, the elder, in 1793, and who divided with Henry Clay, the honors of great debates in the Kentucky Legislature, out of which debates resulted the duel between him and Henry Clay, married another sister of John Marshall, and was in blood his kinsman.

At this bar Thomas A. Marshall, who made his early reputation—a reputation which was increased by most admirable service in the Federal House of Representatives, and was made permanent in the judicial annals of Kentucky by his long and incorruptible career as Chief Justice of Kentucky—was a nephew of the Chief

Justice. Those of us who are old enough to have heard Thos. F. Marshall, have memories which may excite the envy of those who were less fortunate. In that old Court House which has been replaced by this beautiful structure, perhaps no more eloquent advocate ever charmed or misled a jury than Thomas Francis Marshall. Among the sons of Kentucky born upon her soil, few were equal, perhaps none superior, in native intellectual gifts, in the extent and value of his attainments, in the keenness of his wit, the clearness of his reasoning, the lucidity of his speech, to this gifted but erratic and unfortunate son of genius. And if he had not been so great a man, it is not unlikely that in the judgment of Kentucky his brother, Edward C. Marshall, would have held his place. If Edward Marshall had a superior as a public orator, as a humorist and wit, it was only his elder brother.

Three Johnson brothers were members of the Lower House of Congress; three of the Marshall brothers sat in that same body. We know of no other instance in Kentucky where one family gave three brothers to the Federal Congress. In each case, however, other members of the same family bearing the same name were also thus honored. Two of the Marshalls, Thomas F. Marshall and Dr. Alexander K. Marshall, represented this District. Edward C. Marshall represented the State of California, of which he was afterwards Attorney General.

Among the later members of this bar whose memory is fresh with us was another relative of the Chief Justice, Henry Marshall Buford, than whom no abler or purer judge ever dispensed justice from this, or any other bench.

But in a broader view, Kentucky was part of Virginia when John Marshall was born, and we claim him as one of our native sons. It is true that after he had won his reputation as soldier and also after his wondrous argu

ments in favor of the ratification of the Federal Constitution in the Virginia Convention, Kentucky became an independent state, co-equal with Virginia in the sisterhood of states, but she did not surrender by that act her share in the glories of the old mother—her part in the honors won or to be won by her brothers who remained within the territorial limits of the old State. Her immigrants had brought from Virginia the laws, the customs, the traditions, the glories of the Old Dominion. They formed part, the larger part, of our wealth when we became an independent state; they are an inalienable part of the heritage which we have received from our ancestors; they were inwrought in the fabric of our institutions; they have been inwrought in the very nature of Kentuckians. To-day we claim Washington, Jefferson, Marshall, Henry and their compeers as if they were all children of the same mother, sprung from the same womb, begotten of the same loins. Therefore, we can say of Marshall that he is ours, using the word in a sense in which it can be used in no other state save in the State of Virginia. He was trained in a Virginia family, he sprang from Virginia stock; he was a Virginian of Virginians, and this can be said of those who laid the foundations of Kentucky; those who made Kentucky what she was in the early days of her history; and the projective force of their teaching—their lives, have marked the pathway in which she has trod, the glorious pathway which she has adorned with many a memorial of her devotion to those principles of constitutional liberty and of domestic honor which she shares with the children of Virginia.

John Marshall is an illustration of what is sometimes called a "round man." I am not a believer in the doctrine that holds that the human intellect is so narrow that a predisposition to succeed in any one department presumes an incapacity to succeed in other depart-

ments ; that great and eminent success in some line of intellectual vocation is an indication that failure would have followed if he had been called to another profession, and had attempted to work in other lines. This contradicts the history of mankind. I believe in the integrity of the intellect : in its capacity to discharge all of the duties of life ; I believe that if a man is capable of rising to eminence by faithful and patient daily discharge of duty in any department, it is presumptive evidence that he would have succeeded in any other department ; and this has been singularly illustrated in America. Our great soldiers have been our great citizens ; our great lawyers and judges have been our most eminent statesmen. It is not an unusual life in which a man has succeeded on the battle-field, at the bar, in the halls of Congress, and wherever else he has been called to display intellectual activity. There is a vast difference between universality of intellect and versatility of intellect. It is a somewhat ignoble illustration, but it is also somewhat apt, that great intellect has the quality of the elephant's snout, which can tear down the huge tree of the forest and pick up a pin from the ground. This very bar has names upon its rolls that it would be difficult to determine in which department of activity the men achieved the highest eminence. Looking upon him who stands in bronze in the middle of Cheapside, what will the world hereafter say ? Was he greater as orator, as statesman, as soldier, or as typical Kentucky gentleman ? And the same can be said of others who have passed from us in life, but remain with us in immortal influence. To this class John Marshall belonged. He undertook no work in which he did not succeed ; he was called to no vocation in which he did not rise to the eminence which his opportunities made possible ; and he was called to vocations that are radically antipodal and which called for qualities apparently es-

sentially unlike. As a soldier he exhibited qualities not only of courage, but of persistence, endurance and capacity. Leaving the army, he early exhibited the highest qualities of a successful lawyer.

In some way, I do not know exactly how, under a cold exterior, he carried such warmth of nature, as to win public affection, and was never defeated at the polls. On the floor of the Virginia Constitutional Convention to ratify the Federal Constitution, he showed himself in argument the peer of the greatest of those men, which is equivalent to saying the peer of any debaters the world ever heard, for the world has never seen a body of men in which higher intellectual qualities were daily displayed. He met Talleyrand in diplomatic struggle and was the victor; on the floor of the House of Representatives, he was easily a leader; as Secretary of State he has had no superior in the one hundred years since he lived, and but two or three equals; and as Chief Justice he stands without a peer in the history of the world. There has been no greater judge presiding in any tribunal, speaking any language, than he was. The qualities of a soldier seemed to be radically different from those which would give victory to the diplomat who was to meet Talleyrand; those qualities which would give success to such a contest would seem to be wholly dissimilar to the qualities which would give hope of victory in a forensic debate with Patrick Henry, and that arena is essentially unlike the chair of the Chief Justice of such a Court as our Supreme Court. This is not mysterious; it is not unfrequent in the history of men. It is not very frequent because but too few men are given such opportunities, and few men have gifts equal in extent to those possessed by John Marshall, but in various degrees and according to the opportunities permitted it is not a unique life.

But the man John Marshall was always greater than

the position which he filled, and the possibilities within him larger than the call upon him. He, therefore, discharged every duty with a certain marvelous simplicity, with an air of ease as if it were a most ordinary event, calling for no extraordinary effort. His fidelity to his duties indeed often seemed to be equal if not superior to the capacity exhibited. One peculiarity of his long and illustrious career is that every position to which he was called seemed to be the one for which he was best fitted, and every act which he performed appeared to be that for which he was best prepared. He never over-did his duty ; there was no appearance of effort ; no ostentation ; no show of extra force or energy. He was like unto the ceaseless, invisible, inaudible forces of nature around us—you see the sun in his orbit ; your sense of beauty is delighted at the flowers which bloom about us, and fill the air with fragrance, but we neither see nor hear nor are able to measure the subtle, silent, ceaseless forces whose powers are thus illustrated. And so with him,—there was a simplicity, an unostentation, a quiet development which hid the tremendous intellectual power which was necessary to create, and which did create these various acts. It is still one of the unsolved mysteries of our psychology and philosophy, how this human intellect of ours does its work. We have not got seen into its hidden depths, nor do we understand its mysterious mechanism. In what manner these conceptions are formed and how they are turned in the alchemy of our intellect into production has not yet been revealed.

John Marshall was always and everywhere a simple man, a Virginia gentleman. In the day of his obscurity he knew no superior and bowed his head in no man's presence. In the day of his greatest eminence, he permitted no man to feel that he held himself above him. In no act or word or deed did he ever wound any one by an assumption of superiority. He was the equal of the

highest on every day of his life ; he made himself the equal of the lowest on every day of his life ; the kindly qualities were equal to the intellectual gifts ; the domestic affections were perhaps greater than the scholarly attainments, and this is one of the secrets of his perpetual power. Peace is next to purity in the divine economy. First pure then peaceable ; and the world can never estimate the wondrous power which peace gives to him whose days are devoted to labor and whose nights do not shirk toil.

His career was as remarkable as his varied gifts. In that career were so many events that the subjects which will be the topics of discussion today in various parts of the country will be almost as numerous as are the celebrations. It is impossible for us to realize the circumstances which surrounded him when he assumed the office of Chief Justice. We were then a very feeble folk ; we were trying an experiment which had been commenced only eleven years before. That Court was a unique judicial tribunal ; no tribunal like unto it had ever before been established ; no tribunal like unto it has ever since been erected in any other country. He was also environed by very peculiar personal and partisan circumstances. He had been a leader of his party ; the confidant of Washington, and Secretary of State under John Adams, and the enemy of Thomas Jefferson. His party had been driven from power, and he was passing from the office of Secretary of State to a life tenure of his judicial office. His great adversary had become President. He believed the principles of Thomas Jefferson were, to say the least, dangerous, if not absolutely destructive to the perpetuation of the Union which he loved, of the government whose powers he believed ought to be conserved.

The election of Mr. Jefferson was not merely the defeat of the Federal party ; it was not a mere change of

the personnel of President and National Officers. Mr. Jefferson himself fitly described it as a revolution; and it was a revolution which seemed to be and was in certain senses permanent. The Federal party had thrown itself unwisely athwart the progress of the new Republic. There are two great elemental forces in constant conflict; and they are represented by two great classes of leaders—the one who believe in all that is of the past; the other who look forward to all that is hopeful in the future. The error of the one often is that they will not see anything good that is not of the past; and the error of the other is that they will not preserve what is good of the past. Of neither Mr. Jefferson nor Justice Marshall can this be properly said, and yet each was a leader of his respective party. Jefferson always lived in the future, but he always carried with him the wisdom, the power and the triumphs of the past. Marshall was a conservative, but he was a radical conservative. He believed in the old truths, the old traditions; he accepted nothing new without examination, but he was always ready to adapt the old principles to the new conditions; to slough off whatever of the old had become useless and to build into the old house whatever was needed for its new uses. They were also radically unlike in their temperament; they were neighbors, and neighbors who differ and differ so radically, are more apt to be enemies, for they have daily opportunity to feel aggrieved at the differences which are daily presented to them. The success of Mr. Jefferson was a victory of the future, and was soon followed by the great act of the purchase of the Louisiana Territory, which I do not hesitate to avow, was, next to the Declaration of Independence, and the adoption of the Federal Constitution, the third great step forward of the American Republic. The power of Mr. Jefferson controlled every department of the government except the judicial department. The Executive and

the Legislative departments soon passed under his control, and the popular will was on his side. The difference between Mr. Jefferson and Justice Marshall was practically not as great as it seemed to be, and we, looking back upon those days, can now see how nearly similar their acts became when they were called upon to act. It is more than probable that if Marshall had been the President he would have purchased the Louisiana Territory, and he certainly had clearer views of the Constitutional power of the United States to acquire foreign territory than did Mr. Jefferson, who doubted the Constitutional power of this sovereign nation to acquire and govern foreign territory, and this doubt never entered the judicial mind of a great jurist like John Marshall. It is not unlikely that if Mr. Jefferson had become the Chief Justice that he would have construed the Constitution in a sense not very dissimilar to what is the Marshall construction, when all the decisions by Justice Marshall are carefully analyzed and reconciled. When Jefferson purchased the Louisiana Territory, the perpetuity and unity of the Government of the United States became absolute. No act of governmental sovereignty could be higher than the acquisition of such a territory, for the purpose of being converted into equal states, which states should enter the Union upon terms of absolute equality with the older states. No dicta of John Marshall, no opinion rendered by him is equal or can by any possibility be made equal in its results to the consolidating power of the acquisition of such a territory, for such a purpose. When all of John Marshall's decisions are reduced to their ultimate analysis, they merely mean that the Constitution of the United States is to be construed as an act of government, an organic statute giving vigor and power to the government. But Thomas Jefferson went one step further and actually put into operation all the powers of sovereignty, when he pur-

chased that territory, united it to the territory then belonging to the United States, and with the avowed purpose put into the treaty that that territory should be divided into states, which states should enter the Union as component and equal sovereign states. In truth the apparent difference between the Democratic and the Federal party was never so great as is made to appear in discussions in our history. Those leaders had all been rebels; they had all been English subjects; they were trained under the English Constitution; they were lovers of the same principles; they were intense believers in judicial liberty, liberty regulated not only by law, but liberty protected by courts, and in spite of their apparent differences, the fundamental principles were nearly in accord. When they came to act there was hostility. John Marshall found his party moribund; he was an exceedingly adroit and wily politician. Men do not become translated by being transferred from the bar to the bench. This translation is not the translation that happened to Enoch and Elijah. They remain the same men. Marshall, therefore, did not undertake to form a new party; nor did he undertake to keep alive the Federal party; nor did he undertake to organize around him a political party; he accepted the powerlessness of the judicial department at the polls and in legislation; but with an adroitness that has never been surpassed, if we may use so narrow a word as adroitness to describe so great a policy, he elevated the judicial power to the unequalled place it holds in American politics. I use the word "politics" in a higher and broader sense than that of partizan differences—in the broad Athenian sense. The Supreme Court of the United States has a power which no other tribunal ever had—the power of declaring the acts of the Executive and the enactments of the legislative departments void; to judicially determine that the act of the co-equal executive was absolutely without

effect, and that the enactment of the co-equal legislature was absolutely void. And John Marshall put the defense of this upon a ground that could not be denied. His argument was irresistible, and has been accepted without dispute and is a fundamental principle of our Government, and necessarily must be so under our Constitution. He put it in the simplest possible form,—the Constitution is supreme or it is not ; if it is supreme all departments must obey it ; the judicial department must construe it,—that is, declare what it is ; when it declares it, the act of the Legislature or of the Executive is instantly discovered to be in accordance or in hostility to that Constitution,—if in accordance with it the judicial department has nothing further to do than to enforce it ; if it is in hostility to it, to declare it void. It is not true that he made a new constitution. He is praised with injustice and condemned without justice, when he is either praised or condemned for making a new Constitution. Interpretation, construction, exposition has been well said to have been all that he ever claimed to be within the scope of judicial power. But he construed it in the light of his own belief of what the Constitution ought to be, as far as the words and phrases would permit ; and his constructions of the powers were so great, and his argumentations so unanswerable that the country has accepted most of the great principles of construction which he announced.

I do not hesitate to say that as between Marshall and Jefferson, I admire Jefferson more than Marshall. I believe Jefferson was the greatest political philosopher the world has ever seen ; the noblest uninspired intellect ever devoted to governmental studies and duties, and the few sentences of the Declaration of Independence, the most important uninspired sentences which the world now possesses. I do not see, humanly speaking, how the experiment of civil liberty in America could

have been entered upon with any reasonable hope of success and the experiment made fairly successful, except for the principles enunciated by Jefferson, under the leadership which was given to him. With some of the conclusions enunciated by John Marshall, I thoroughly disagree ; his arguments do not convince, I believe in the modifications which the Supreme Court under Taney and others made of those opinions. But I do not hesitate to avow that the appointment of John Marshall and his long life as Chief Justice, are two of the most important and beneficent events in our history. Out of the fires of conflicting dogmas ; out of the acting and counteracting operation of contending parties, the truth finally emerges, and a wise compromise is finally adopted. The Republic of today could not have been builded as it is, if all the builders had been given the same gifts, and had worked upon precisely the same lines. It is the joint temple builded by many builders, each doing his part, so that under a higher influence, every part is fitted well into every other part. Today instead of holding up any differences of opinions, or any hostility between Jefferson and Marshall, I beg you to walk around our temple, look upon its towers, read its inscriptions, meditate upon its engravings, pause and admire its chambers, and recollect that it is the joint work, in large part, of these sons of Virginia, each of whom builded himself into its walls, and whose hearts are parts of its foundations. Under Jefferson we adopted a system under which two states can abide in peace, and under which one hundred states can develop in power. We have solved the problem that freedom can exist without limitations of number. The world never saw a free country of fifty millions until our growth and power remain with over seventy-five millions, and no longer does extent of territory, or growth of population inspire any dread or create any doubt. Under a system

where the local affairs are controlled by local governments, and the common affairs are under the power of the legislature, which has complete legislative power, and under an executive wielding entire force in all the states ; with a judicial system that keeps within its constitutional limitations the powers of the executive, and the acts of the legislature, there is no possibility of disaster except upon the theory that man is incapable of self-government. If man be capable of self-government there is no reason to dread the future. To Jefferson we owe more than to any other man the spirit,—the actual condition of our political system ; to Marshall we owe more than to any other man the necessary limitations upon power. To Jefferson we owe the possibility of the exercise of our tremendous powers ; to the construction of the Constitution, fixed upon it in the opinions of Marshall, we owe the proper observation of those limitations of power, which otherwise might result in despotism,—despotism of the executive or despotism of the legislative department. To one we owe the hope of unlimited expansion, consistent with regulated freedom ; to the other more than to any other man, we owe the certainty of the limitations of power within constitutional bounds. Imperialism is a miserable nightmare of diseased fancies to a nation with such a political system as that called the Jeffersonian, under a Constitution construed in the light of the opinions of Marshall.

It does not fall within the scope of the duty assigned to me to take up the various judgments and opinions of Justice Marshall, and to show how one by one the results which I have pointed out above were reached. Other gentlemen at this bar and at other bars, with more learning and more acute analysis, will perform this duty, and it is a very high duty of immense advantage to our generation. They were great opinions,—not very numerous, easily apprehended, for it is a peculiarity of his style

that it is so lucid that one ceases to recall the abstractness of the subjects, and the closeness of the logic in the simplicity of the diction. It has been said of one of them,—the great opinion in the Dartmouth College Case,—that every line has given security to millions of dollars of invested capital; and another bitter critic answered this by saying that while that was true that it had also been used as an excuse for corporation greed, for indescribable cruelty, and for the breaking of many hearts. But it may not be untimely for me to point out that there were four important matters which the Chief Justice was called upon to decide: The relation that the judiciary bore to the other departments of the government; the relation which the general government bore to the states; to the power conferred upon the Federal Government, as for instance, in relation to commerce under that simple statement in the Constitution,—“Congress shall have the power to regulate commerce between the States;” the prohibitions of the powers of the states, and the relation which the Federal Government bore to those states under these prohibitions; as for instance, the power of the courts to declare acts of the states unconstitutional, as in violation of these prohibitions; the relation of the general government to foreign nations, and to the Indian tribes, and the relation of the states to the general government growing out of these relations. In each of these he upheld the power of the general government, without taking any power from the states which had not been prohibited. One can hardly say that in any one of these four classifications did he pass beyond the proper construction of the powers granted, or the necessary powers implied. The result, however, was, not as the result of any one of the decisions, but of all, that the general government was gradually and insensibly, but permanently made paramount. When the courts have the power to declare

the acts of the executive or legislative departments unconstitutional; when the federal court has the power to declare an act of the state unconstitutional, and to reverse the final judgment of the supreme court of the state; when the states have no power to interfere with international commerce, nor with contracts, nor with any of the other subjects especially incorporated in the prohibitory provisions of the constitution; when the states are absolutely without possible recognition in all our foreign relations and in our intercourse with the Indians; when the general government has power unlimited to declare war, make treaties, and acquire foreign territory; guarantee republican governments, put down domestic violence,—the olden limitations which were believed to have been put upon the powers of the general government are very much diminished. The inevitable result of the Marshall decisions was the elevation of the Union to the depression of the states. The Federal Government became the great central power, and the states necessarily became subsidiary in their power if not in their importance.

I have, however, trespassed upon the time which belongs to the other speakers who are to follow me.

Bear with me for one concluding thought:

The Supreme Court has been the example of a pure court to every nation in the world. This is the last, best and greatest invention of civilized government,—an honest, incorruptible and just Court. When the King permitted a chancellor or a judge to sit upon the bench and give judgment, then freedom was assured, and it was possible to wrest liberty from King or Parliament. Pure courts stand as a barrier between the poor and the power of the government. A just court in which justice is fearlessly administered stands in the community as its best and highest development. Blessed be that community in whose courts it has entire confidence; whose

decrees carry with them the imprint of absolute incorruptibility ; whose decisions are known to be law and justice. There can be no such court except in a community that deserves it ; there can be no community that deserves it that will not in the end demand a pure court. All over America today this is not the glory of John Marshall and his associates and successors,—it is the apotheosis of justice, and the elevation of courts,—it is the elevation of the law ; it is to make regnant that law under which liberty alone can thrive, to make potent that justice under which alone our institutions can prosper.

We enter a new century with the government established in its political departments according to the theories of Jefferson, and with the judicial construction upon the powers of the several departments of the federal government and the relative powers of the federal government and the states practically as laid down by Marshall. A great successor of Marshall put into this sentence, “We are an indestructible union of indestructible states,” one of the results, not of judicial construction or of political development, but of the great war between the states. We enter upon the new century, therefore, recognizing, so far as this generation can determine, what is permanent in our system ; and we recognize as part of that permanent system the Constitution as construed by John Marshall. It may not be possible for us today to apportion the praise and reward due to each one of the great men who laid the foundations of our government, and who served the Republic during their lives : nor is it very important. It does not make any difference to the immortals as to whether the earthly crown which is given to their memory have more or fewer jewels. We remember their deeds ; we honor their virtues ; we write anew in our annals their names, and this is all that we can do, except one other and still more

important duty,—to emulate their virtues, to follow in their footsteps, and to teach our children to be like unto them in their lives.

I now turn to the more pleasant part of the duty allotted to me; I have the pleasure to introduce to you as the orator of the day, him to whom has been allotted the fuller duty of fitting description of this great man; of just portraiture of his beloved lineaments; of his undying fame; to whom has been given the pleasant opportunity of reviving before us what he did, and repeating what he said,—our friend and brother, J. H. Beauchamp.

JOHN MARSHALL, THE GREAT CHIEF JUSTICE.

Mr. J. H. Beauchamp followed with the principal address of the day, which was as follows.

One hundred years ago today John Marshall was installed Chief Justice of the Supreme Court of the United States. We have met to add our voice to the Nation's celebration of the first centennial of that historic event. And it is a unique and significant fact in our national history that according to a concerted movement of the legal profession, meetings are to be held this day by representative men and women in the forty-five sovereign States of this Union to honor the memory and public services of this one man, who was never a Governor, a General, a Senator or a President, and who has been gone to his final reward for over two-thirds of a century. It has been truly said that to be an American citizen is a distinguished privilege, and surely a joint heirship to the greatest republic the world has ever seen

is a rich inheritance. The individual that proves himself worthy of such a privilege, such an inheritance, deserves the high esteem of his fellow men, and a conspicuous place on the roll of history ; and if endowed with natural abilities far beyond the general average, he consecrates his life work to the enlightenment and welfare of the masses and the development and stability of the highest type of civilization, within the almost boundless possibilities of republican government, he is by common consent accorded a position among the great of the earth. But when in addition to all this he establishes himself as a leader among leaders, a master among masters, in the domain and rulership of mind, he is elevated to an enduring pedestal of fame in the midst of "the few—the immortal few that were not born to die." Such is the exalted position assigned to John Marshall by the consensus of opinion crystallized in the first century of our national history. Colton said : "In life we find many men that are great ; some men that are good ; but very few men that are both great and good." John Marshall belongs to that elect few, for it is unanimously conceded by historians, scholars critics and jurists that he was in the truest and highest sense both great and good.

John Marshall was born at a village called Germantown, in Fauquier county, Virginia, on the 24th of September, 1755, and on the 6th day of July, 1835, he died in Philadelphia, where he had temporarily gone from his home in Richmond, Va., to seek medical aid. A brief summary of his early life will serve to indicate the facts and circumstances controlled and directed by Providence in preparing him for the high position he was to occupy in the formative period of our constitutional government. His grandfather, of the same name, was a native of Wales, and settled in Westmoreland county

about the year 1730, where he married Elizabeth Markham, a native of England. Of the four sons and five daughters of this marriage, Thomas, the father of the Chief Justice, was the oldest. He removed from this county to Fauquier soon after he reached manhood, and having intermarried with Mary Keith, by which he became connected with the Randolphs, he settled upon a small farm, which was subsequently the birth-place of John Marshall, the oldest son, and which we infer embraced the site of Germantown. Thomas Marshall was a man of extraordinary vigor of mind, and of undaunted courage, and of the highest order of patriotism. He and Washington were neighbors, associates and friends from their boyhood. He rendered gallant and efficient service in the war of the Revolution as commander of the Third Virginia Regiment under Washington. After residing a few years at Germantown, the father removed with his family about thirty miles further west and settled in the midst of the mountains east of the Blue Ridge, at a place called "The Hollow," in a country thinly settled, destitute of schools, but remarkable for the salubrity of its atmosphere, and the picturesque beauty of its mountain scenery. It was here that the son remained until his fourteenth year, laying the foundation for that vigorous health of body and mind which attended him through life. He was fond of nature, received inspiration from its mystic courts and delightful companionship from its pathless woods which he trod, looking "through nature up to nature's God." At the age of fourteen he was sent for instruction in Latin to a clergyman named Campbell, residing in Westmoreland, with whom he remained about a year, having for one of his fellow-students James Monroe, afterward President of the United States. He then returned to his father, who, about that time, removed to a place called

“Oak Hill,” which remained in the family for some years subsequent to 1835. Here he received for the term of another year some further instruction in Latin from a Scotch gentleman named Thompson, who was the clergyman of the parish and lived in his father’s family, and this was the entire extent of his classical education. But his father, though not having had the benefit of an early education himself, was a practical surveyor, adequately acquainted with mathematics and astronomy, and conversant with history, poetry and general literature, of which he possessed most of the standard works in our language; and these were the means by which, with the responsive mind and heart of his pupil, he completed the son’s education. With this material, added to his splendid native endowments, John Marshall mastered a vast field of knowledge and wrought out his great destiny. He became one of the most illustrious and inspiring examples in history of what a man may be and accomplish by the industrious, patient and exhaustive use of the powers and resources within and about him, according to the bent of his talent which always carries with it a prophecy for its use. His views of government became permanently identified with those of Washington, Adams and Randolph, and he was a staunch supporter of Washington’s administration.

The news of the battle of Lexington, which occurred on the 19th day of April, 1775, called him to arms, and in the glow of a fervid patriotism he rushed to the defense of his country. In July, 1776, he was commissioned a lieutenant in a company of the 11th Virginia Regiment of the Continental Army, and in May, 1777, was promoted to a captaincy; and from this time until February, 1781, with the exception of part of the year 1779-80, he was constantly in public duty and at the post of danger, and before the age of twenty-six he had, in dili-

gent preparation and effective service, given one-third of his life to his country. He bore himself gallantly and conspicuously at the battles of Great Bridge, Iron Hill, Brandywine, Germantown and Monmouth ; he shared the sufferings and privations of his comrades during the dark winter at Valley Forge with a patience and heroism that elicited the special admiration of Washington, who entrusted him with the important office of Associate Judge Advocate. In 1788 he was elected a delegate to the Sovereign Convention of Virginia, which assembled on the 5th day of June of that year to ratify or reject the Federal Constitution, and, with the assistance of Madison against the fiery opposition led by the matchless oratory of Patrick Henry, he secured the ratification of the constitution by a majority of 89 to 79. This was considered a master stroke of statesmanship, and the just triumph of his inexorable logic. It has been truly said that "in sustaining the constitution he unconsciously prepared for his own glory the imperishable connection which his name now has with its principles." In the winter of 1779 he was sent to Virginia to take command of the new corps to be raised by the Legislature. While this subject was under discussion he took advantage of the opportunity to pursue the fixed purpose of his life, and attended a course of law lectures delivered by Mr. Wythe at William and Mary College, and Bishop Madison's lectures on natural philosophy. At the close of the war he began practicing as an attorney, and his success was phenomenal from the beginning. As Timothy was conversant with the scriptures, so Marshall seems to have known the law, from his youth up. The benevolence, calmness and sweetness of his temper, combined with his accuracy and grasp of mind, commanded the confidence and admiration of the public, and the attention and respect of the courts of justice. An intimate personal friend said of him :

“In private life he was upright, and scrupulously just in all his transactions ; his friendships were ardent, sincere and constant ; his charity and benevolence unbounded. He was fond of society and in the social circle was cheerful and unassuming ; he participated freely in conversation, but from modesty rather followed than led. Magnanimous and forgiving, he never bore malice, of which illustrious instances might be given ; republican from feeling and judgment, he loved equality, and abhorred all distinctions founded upon rank instead of merit, and had no preference for the rich over the poor ; religious from sentiment and reflection, he was a Christian ; believed in the Gospel, and practiced its tenets.”

In 1783 he married one of Virginia’s noblest women, Mary Willis Ambler, and took up his residence and the practice of his profession in Richmond, which was ever after his home. His marital relations continued in unbroken harmony and love for fifty years. He was repeatedly elected to the Legislature against his inclinations ; declined an offer of the Attorney Generalship made to him by Washington ; and many other solicitations to high positions. Upon urgent request, however, he accepted the appointment of Envoy Extraordinary to Paris in 1797.

In 1799 he was elected to Congress and participated in its last session held in the city of Philadelphia. In the debates upon great constitutional questions, he was confessedly the first man in the House. For a brief period he was subsequently Secretary of State in 1800. We now turn to the special object of this occasion called “John Marshall Day.”

On January 31, 1801, he was, by President Adams, appointed Chief Justice of the United States Supreme Court, the Senate unanimously confirmed the appoint-

ment, and his installation to that high office took place on the 4th day of February, 1801, just a hundred years ago today.

A great philosopher-poet said of Sir Isaac Newton :

“Nature and nature’s laws lay hid in night,
God said, Let Newton be, and all was light.”

So with equal propriety we might say upon this memorable occasion :

“The Constitution and constitutional law lay hid
in night,

God said, Let Marshall be, and all was light.”

At the time he took his seat the court had been in existence but eleven years, and in that time less than one hundred cases had passed under its judgment. The engrossed minutes of its proceedings cover only a little more than two hundred pages of one of the volumes of its records, and its reported decisions fill but five hundred pages of three volumes of the reports published by Mr. Dallas. And the reported decisions of all the Circuit Courts and District Courts of the United States up to that time were put into a little more than 200 pages of Dallas. In this condition of the jurisprudence of the country, Marshall took his seat at the head of the National Judiciary. The government under the constitution had only been organized twelve years before, and in the meantime eleven amendments had been added to the constitution. But little had been done by the courts to adapt the common law of the mother country to the new form of government, or to the new relations of social life, resulting from the successful Revolution ; in short, the possibilities of the government were practically untried, and the constitution and the laws were in their infancy. Under these trying circumstances it was most fortunate for the country that the great Chief Justice assumed his high

position which he occupied for over thirty-four years, and that during all that time, with but slight interruption, he was constantly engaged in the great pioneering work of the National Judiciary, for which he alone was so eminently qualified. As stated by William Henry Rawle, "For the first time in the history of the world had a written constitution become the organic law of any government; for the first time was such an instrument to be submitted to judgment." Mr. Gladstone said: "As the British constitution is the most subtle organism which has proceeded from progressive history, so the American constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." These words were spoken by England's matchless statesman after the practical wisdom and efficiency of the constitution had been illustrated by the National Judiciary under the leadership of Marshall. It is, therefore, almost impossible for us, at the present day, across the lapse of the world's most eventful century, to fully realize the great judicial crisis, and the tremendous responsibilities that confronted John Marshall when he took his seat as Chief Justice. The difficulties before him were novel, serious and complicated. The people were jealous of their personal liberties, and the States were jealous of their sovereign rights. In what respects, and to what extent, the general government was to be superior to the States, and where was to be the dividing line between the supremacy of the constitution and the voice of the people in the untried system of representative government, were questions of vast import, agitating the public mind in every direction. In rapid succession these and many other questions of constitutional, international and general law, in the rapidly developing country, came up for judicial determination.

As a brief and comprehensive statement in point, permit me to read from an address delivered at Chicago

on the 2d of June last by Hon. Isaac G. Phillips to a graduating law class :

“The great constitutional questions of Marshall’s day may be briefly stated thus : Is the Federal government the final judge of the extent of its own powers under the constitution? Is the Supreme Court a subsidiary tribunal, which must take Federal law from Congress, Presidents, or from State tribunals, or is it an independent tribunal, endowed with full power to finally judge of its own jurisdiction? Is the Federal government a sovereign nation, established by and acting upon the people, or is it a mere compact, a treaty among sovereign States, whereof no common and final Judge is provided? And a subsidiary question, in logic, to these, yet greater in consequence, was the other momentous question : Is the Federal Union perpetual, or may it be dissolved by the action of one or more of its members?”

In all these matters Marshall’s great mind surveyed, defined and fixed, with clearness and certainty, the boundaries of national power. He gave the constitution that consideration and construction which defined and determined the philosophy and extent of the powers delegated to the general government, and of those “reserved to the States respectively, or to the people,” and which outlined and settled the powers and limitations of the legislative, judicial and executive departments of the government, and established each within its proper sphere, so as to insure that harmony and balance of power essential to the success and perpetuity of our republican institutions. In decision after decision, he unfolded the hidden treasures of the constitution, and the published cases decided during his incumbency fill about thirty volumes. An eminent legal scholar has said that “Marshall found between the lines of the constitution ‘the implied powers’ without which the

central government could not effectively have acted, or the Union long have endured. The constitution was necessarily couched in general terms ; Marshall supplied the details. He made of us a nation by construction." And again : "Upon questions of constitutional law during a matter of nearly thirty years, he dominated the court, not by bluster, not by violence, not by craft, but by the charm of a rare personality ; by force of a native genius, and wisdom, and power of cogent reasoning and common sense which are without a parallel in judicial history."

In *Marbury vs. Madison*, 1 Cranch, 45, Marshall pronounced an act of Congress void as being in conflict with the constitution, and in so doing established the jurisdiction of the Supreme Court as the final interpreter of the constitution as against Congress.

In the case of the *United States against Judge Peters*, 5 Cranch, 115, Marshall granted a peremptory mandamus to compel a United States District Judge to enforce obedience to a judgment of his court.

In *Fletcher vs. Peck*, 6 Cranch, 87, Marshall held a State statute void, as being in conflict with the constitution, and this decision was followed in Marshall's time in twenty-six subsequent cases.

In *Martin vs. Hunter's lessee*, 1st Wheaton, 304, he held that the appellate power of the United States extends to cases pending in the State courts, and that the Federal statute authorizing such appellate jurisdiction was constitutional.

In the great case of *Dartmouth College vs. Woodward*, 4 Wheaton, 588, Marshall applied the clause of the Constitution prohibiting the passage of laws impairing the obligation of contracts. The doctrines of this noted case have been somewhat modified by subsequent judgments of the Court, but the main doctrine announced is still followed.

In *Cohens vs. State of Virginia*, 6 Wheaton 264, he decided the Supreme Court could exercise jurisdiction in a case where a state is a party and a citizen of such state is the other party in a case arising under the constitution and laws of the United States, and for that purpose could revise the judgment of the highest court of the State.

In *Gibbons vs. Ogden*, 6 Wheaton, 1, he asserted the great constitutional doctrine of the power of the general government to regulate commerce, and held that the word "commerce" in the constitution comprehends "navigation." In these, and in many other cases too numerous to mention, he unfolded the basic principles of the constitution which have been so successfully applied to cement our union, insure its prosperity and establish its greatness and supremacy among the nations of the earth.

Chief Justice Waite has very aptly said that John Marshall "kept himself at the front on all questions of constitutional law, and consequently his master hand is seen in every case which involved that subject. * * * Hardly a day now passes in the court he so dignified and adorned, without reference to some decision of his time as establishing a principle which from that day to this has been accepted as undoubted law."

Justice Story, in an address delivered on the occasion of Marshall's death, spoke "of those exquisite judgments, the first-fruit of his own unassisted meditations, from which the court has received so much honor;" and he again said: "The constitution since its adoption owes more to him than to any other single mind for its true interpretation and vindication." Judge Story was associated with him on the bench for twenty-four years.

With all this evidence before us, which, according to a well established rule of law familiar to the bar, is the best of which the case in its nature is susceptible, we feel warranted in safety from the imputation of hyperbole or of hero worship in offering this three-fold tribute.

John Marshall, before he entered the threshold of his high judicial career, had, in the depths of his original thought and purpose, gathered all the elementary principles of all just and righteous government among men, and by his constructive genius wrought them into that plan and model by which he measured all the possibilities of the constitution and gave to it that construction and interpretation which alone could make it the practical and enduring basis of government "of the people, by the people and for the people."

Our national banner—"a thing of beauty and a joy forever"—with its red, the symbol of sacrifice and service; its white, the symbol of purity and truth; its blue, the symbol of loyalty and fidelity, was elevated to the realm of true prophecy by the strong arm of John Marshall. And the new ship of state, launched amid war-raging winds and clashing billows upon the unexplored bosom of the political sea, made its trial trip in safety because John Marshall was at the helm.

It may appear from an ordinary standpoint that Marshall in his great work was left to "his own unassisted meditations;" but when we think for a moment of his great depth of mind, in sympathy and communion with the source of all righteous government, we can discover that his meditations, whilst "unassisted" by any of his fellow-men, received strength, direction and efficiency from the Fountain of all intelligence and wisdom. He seemed to go back behind all published forms and systems, and realize the fundamental truth that, in the truest and highest sense, men do not originate or make law; that the All-wise Creator, from the beginning, projected and established a system of laws co-extensive with all created matter, and all created life, and all created intelligence; that the department of this system pertaining to human affairs is, "in the eternal fitness of things," per-

fectly suited and adapted to the best interests of man in all his individual conditions and social relations; that it is the fundamental basis of all just authority among men; the eternal first principles of justice, liberty, progress and development; that Jehovah himself promulgated no new law when he gave to his chosen people the Ten Commandments, but simply declared the law as it had always existed from the foundation of the world; and that the highest office and privilege of man, in civil government, is to ascertain and declare the law as it has always existed, and to apply it to the wants and necessities of all the subjects of that government. This fundamental idea, this bed-rock principle, was grasped by the giant mind of Marshall with an incisive depth and comprehension almost divine. Thus endowed with the true philosophy of great first causes, he adjusted himself to the revelation of his destiny in interpreting and expounding the constitution according to the true meaning and purpose and design of its founders, and so as to place the entire Republic upon the most perfect and enduring system of jurisprudence that was possible, without doing palpable violence to the letter of the constitution itself. And thus he wrought his wonderful work.

I hold in my hand the most remarkable and significant message ever sent by man to man in the changeful events of the world's history, dispatched from our National Capital to King Edward VII., on the 22d of January last, as follows:

"I have received with profound sorrow the lamentable tidings of the death of Her Majesty, the Queen. Allow me, sir, to offer my sincere sympathy and that of the American people in your personal bereavement and in the loss Great Britain has suffered in the death of its venerable and illustrious sovereign, whose noble life and beneficent influence have promoted the peace and won the affection of the world.

[Signed]

"WILLIAM MCKINLEY."

We believe that this is the highest tribute ever paid to the ruler of any civil government on the earth. Where, in what age or in what clime, has it ever before been announced by one in high authority, concerning any King or Queen, Emperor or Empress, Prince or Princess, Governor or Ruler, that his or her "noble life and beneficent influence have promoted the peace and won the affection of the world?"

And yet, marvelous to state, this does not surpass the tributes which, within the high legal profession and exalted judiciary of the English-speaking people, have been repeatedly offered to the name of John Marshall as Chief Justice of the Supreme Court of the United States of America.

The very best we have to offer is as "the light drip of the suspended oar," and our feeble efforts die into an echo.

Let us hope and trust that the wise and beneficent principles of free government thus defined and established, under the leadership of this great jurist, are now permanently embedded in the fundamental law of our glorious Republic, and will endure as long as there is one family left upon the earth. But should the constitution ever be trampled beneath the feet of selfishness, greed, or lust of power, and its splendid framework be wrecked and engulfed in the wild frenzy of a counter-revolution back to the dark ages; while there is a ray of reason with responsive memory left to influence the thoughts and conduct of men, the name of John Marshall will be cherished as a priceless heritage of the greatest century that has thus far measured the lapse of time.

THE EARLY BAR OF FAYETTE COUNTY.

**Mr. Samuel M. Wilson, the first speaker at
the Evening Session, delivered
the following address.**

One hundred and ten years ago today, on February 4th, 1791, the Act of Congress, granting to Kentucky prospective admission into the Federal Union, became a statute of the United States. Ten years later, on the same day in February, John Marshall, of Virginia, took his seat as Chief Justice of that Union, of which Kentucky had become a constituent member. While the patriotic wise men of the Revolution were busily engaged framing a constitution for that mighty Republic, which their arms had helped them to establish, the pioneer lawyers and statesmen of Kentucky were making strenuous efforts to gain for Kentucky the long-coveted dignity of Statehood. Those who had trembled for the safety and perpetuity of the national government under the old Articles of Confederation were not more relieved by the adoption of the Constitution of 1787-89 than were the founders of our Commonwealth by the enactment of this law of 1791, which, as all know, became effective on the 1st day of June, 1792.

Just as the elevation of John Marshall to the position of Chief Expounder of our Constitution marked the beginning of a new era in the national life, so the entrance of Kentucky upon the full enjoyment of Statehood opened a new era of development to the unexampled energies and resources of the West. Hence the day we celebrate in honor of John Marshall is to us a double anniversary, and it is not inappropriate that upon this occasion we should turn for a little while to one of the earliest chapters in our history and briefly contemplate

that splendid body of men who, having succeeded in founding a State, first gave their services to the noble task of constructing and administering its laws.

Fayette County was first established in 1780. Prior to that time it had been a part of the County of Kentucky, which was erected as such in 1776, and comprised pretty nearly the same territory it afterwards included when organized as a State. Before the Revolution, Kentucky had been the westernmost part of the almost limitless County of Fincastle, Virginia. Describing the "course of empire" during that critical period in American history, Judge Robertson, of this bar, has said :

"In 1774, the tide of civilization, moving westward from the Atlantic, approached the Alleghanies,—the Anglo-Saxon race destined to conquer and enlighten the earth, crossed the mountain barrier—and Finley, and Boone, and Harrod, and Logan, and Knox, and Whitley and Kenton, hunters of Kentucky, came and conquered. They brought with them the rifle, the axe, the plough, and the Bible. And, thus armed, this vanguard of their race led the forlorn hope of western civilization to victory and to fortune. The Indians fell by their rifles, the forest by their axes, and savage idols tumbled before God's Holy Book—until the current of population, rolling on, wave by wave in rapid succession, soon made Kentucky a rich and powerful State—the first-born of the Union of 1788, and now, even now, unsurpassed by physical blessings and moral power—already the mother of younger Commonwealths in the great Valley of the Mississippi; and, in many respects, a fit exemplar to the nations of the whole earth."

The establishment of Fayette as a County in 1780 merely gave it the right to a County Court, County Magistrates and other County functionaries and officials. It had no court of general civil and criminal jurisdiction, such as would have served to attract a regularly consti-

tuted bar of resident attorneys. In 1783 the three counties of Fayette, Jefferson and Lincoln were erected into a Civil District, under the name of Kentucky, with a Supreme Court for the District, which held its sessions at Danville. Danville thereby became the center of attraction to Kentucky lawyers and this Supreme Court retained exclusive control of all the important legal business of the District until Kentucky became a State in 1792. In that year the seat of judicial power, by an act of the first Legislature sitting at Lexington, was transferred to Frankfort and the jurisdiction formerly exercised by the old Supreme Court was lodged in the Court of Appeals, where it remained unimpaired until Lexington was granted a District Court in 1796. There were, of course, individual lawyers in Fayette County before that time, but we cannot be said to have had a regular local bar until the happening of this important event. It was four years after Kentucky had become a State and twenty years after the tide of immigration from Virginia and her neighbors first began to flow steadily westward. Many ambitious and adventurous spirits who invaded the trackless domain of the Kentucky wilderness, brought with them the atmosphere and somewhat of the learning of the law offices and law courts of the "Old North State" and of the "Old Dominion." Such a man was Judge Richard Henderson, of North Carolina, who in company with Captain Nathaniel Hart, Colonel Richard Calloway and other brave adventurers, made an ineffectual attempt to plant a proprietary government amid the wild freedom of the "Transylvanian" wilderness. They were men of education and wealth as well as men of affairs. Such an adventurous scholar and soldier was the lamented Col. John Todd, who fell in the fatal encounter at the Blue Licks in 1782. He had studied law in Virginia and came to Kentucky early in 1775 as a deputy sur-

veyor under Col. Wm. Preston, when Col. Preston's jurisdiction as Surveyor was still co-extensive with the original limits of Fincastle County. Col. Todd was said to be the best educated and most accomplished as well as the richest in natural endowments of all the early pioneers of Kentucky. It was under his personal supervision that the old Fort on the Town Branch was erected in 1782, and in the same year he was appointed one of the first Trustees of the town of Lexington. The well-known farm Mansfield, on the Richmond pike, was located by him and so named by him as early as 1776. General James Wilkinson, who settled in Lexington as early as February, 1784, and soon became a popular idol, was a man of a different type from those we have named, but still a man of heroic proportions. Opinion has long been divided as to whether he was a patriot or a demagogue, but his capacity for leadership and his exceptional talents have been universally acknowledged.

Time would fail us to speak even briefly of that long roll of lawyers and legislators who came as pathfinders and pioneers and took a foremost part in the political and legal beginnings of Kentucky. It was, indeed, an heroic age. These men were not giants or angels or demi-gods. They were all "men of like passions with ourselves." But the romantic spirit has never reached a higher tide and the chivalrous and heroic virtues have never achieved a nobler exemplification than were to be found in the backwoods of Kentucky during the last quarter of the Eighteenth Century. Lexington and Fayette county had their full share in the glory of that heroic age. Once well started, the growth of Lexington was phenomenal. In 1787 it could boast the only newspaper published in the West, if we except Pittsburg. It outbid Danville and other Kentucky towns for the permanent location of the Transylvania Seminary, and in 1792 was the chief rival of Frankfort in competition for

the Capital of the State. The beauty and fertility of the adjacent country as well as its central location gave to the county-seat of Fayette a commanding influence in the affairs of the infant State. But no less important than these natural features of the region was the character of the inhabitants which it attracted. At first men of action, like Boone and Kenton and Logan, were the leaders. Then came men like Shelby and Clark and Todd, who both thought and fought. These were followed in turn by statesmen and lawyers such as Nicholas, Breckinridge, McDowell and Wallace, and by teachers and preachers such as Templin, Rice, Blythe and Cameron, who formed the laws and guided in molding the institutions of the new-born State. The society of those early days was primitive only in the sense of being somewhat colored by its primitive environment and in possessing certain uncouth elements inseparable from a frontier settlement. It was far from being immature or unpolished or illiterate. The settlers brought with them the high ideals of the "Old Dominion." The husbands and the brothers came fresh from the training hands of the most vigorous and intellectual race of men that the world has ever seen, and in not a few instances the pupils had outstripped their masters. The history of the celebrated "Political Club" at Danville, which existed from 1786 to 1790, and of the interesting series of District Conventions, which gathered there from 1784 to 1792, when a State Constitution was finally adopted, must be read and studied in order to appreciate the broad-minded character and marvelous attainments of those who prepared the groundwork of this great Commonwealth. The part which Fayette took in the stirring events of those preparatory years can be given only in the briefest outline. To the Danville Convention of 1787 she sent Levi Todd, John Fowler, Humphrey Marshall, (a cousin of the Chief Justice), Judge Caleb Wallace and William

Ward. To the important Convention of 1788, also held in Danville, she sent Gen. James Wilkinson, Col. Thos. Marshall, father of Chief Justice Marshall, who was made Surveyor of Fayette County after its formation and opened his office in Lexington late in 1782; Judge Caleb Wallace, William Ward and Col. John Allen. Of those who represented Fayette in these two conventions, Gen. Wilkinson, Judge Wallace and Capt. Levi Todd had been delegates before, and in addition to these we may mention Col. Robert Patterson, the "Founder of Lexington," Gen. James Trotter, Col. Robert Johnson, father of Vice President Johnson, and grand-father of Major Madison C. Johnson, Edward Payne and James Rogers. In the Virginia Convention of 1788, called to ratify the present Constitution of the United States, Kentucky was represented by fourteen delegates, of whom but three voted in favor of ratification. Two of these, Robert Breckinridge and Rice Bullock, were from Jefferson County, and the third, Humphrey Marshall, from Fayette. Humphrey Marshall's colleague at that time was Capt. John Fowler, for many years afterwards an honored and respected citizen of Lexington. To the Danville Convention of 1792 Fayette sent five delegates, but the overshadowing influence of the delegation from Mercer, headed by the great George Nicholas, kept the members from Fayette as well as the members from most of the other counties, rather in the back-ground.

Before its admission into the Federal Union, Kentucky never had a territorial or other separate government, but after the inauguration of the State government in 1792, Fayette County not only elected her best men to the Legislature but contributed more than her equal proportion to the administrative and judicial offices of the State. From 1792 to 1796, as we have stated, all the most important litigation of the State was transacted at Frankfort, and the records will show that the bulk of it

called into requisition the learning and talents of the Lexington Bar. Our local Bar history, however, properly takes its date from the 17th of May, 1796, when the first Court for the District of Lexington was formally opened at the Court-house in this city. Upon a subject so vast, it is impossible to go into minute details or to begin to cover any very long period in the limited time at our disposal.

Beginning with the year 1796, and running through a period of a little less than two years, there came to the Lexington Bar a group of thirteen lawyers, the first of whom was James Hughes and the last of whom was Henry Clay. These names are not selected or "picked" names, but are taken in regular order just as they appear upon the records of the District Court. The lawyers thus admitted were all contemporaries. Some of their names are familiar and historical; others are more obscure; but, taken all together, they may be regarded as fairly illustrative and fairly typical of the "Early Bar of Fayette County."

The District Court which first sat at Lexington in 1796, had jurisdiction over four counties, namely, Fayette, Scott, Clark and Madison, but it must be remembered that there are now about five times as many counties in the State as there were then and the counties named were large in proportion. It was first provided that this Court should hold two terms a year, at each of which, if the business required, it might sit for fifteen—afterwards changed to ten—juridical days in succession. It is obvious, therefore, that the sessions of the District Court at Lexington could not have monopolized the entire time and attention of the lawyers of that place. So it was with the other lawyers throughout the State. They were all "Circuit Riders," like their ministerial brethren, and went here, there and everywhere that their business might require. Some of the lawyers we shall mention

probably never took up their residence permanently in Lexington. Others lived here only at intervals and for short periods of time. Many who resided here more permanently and who possibly located here at an earlier date, may escape notice. But it remains true, as the writer believes, that we may gain a fair as well as a tolerably clear idea of the character and capacity of the Early Bar of this County by considering the attainments of those who, according to the records, were first admitted to its membership.

The first of these, James Hughes, was admitted to practice here on May 17th, 1796. Mr. Hughes was an eminent "land lawyer," the meaning of which will be better understood when we recall that land law was then the most lucrative and important branch of the profession. In 1803, at his own expense, he published a volume of selected decisions of the old Supreme Court, which sat at Danville, and of the Court of Appeals of Kentucky, rendered in suits for land,—commencing in 1785 and ending in 1801. This work constituted the first volume of Kentucky Reports and is valuable now more as an historical than as a legal production. In the preface, the author acknowledges his indebtedness for manuscript notes to "the late Colonel George Nicholas" and explains that the work was originally undertaken by Colonel Thomas Todd and the author jointly, but a different arrangement having subsequently been effected, the book had been published by Mr. Hughes alone. From a financial point of view, it was an unprofitable venture, for, as one has said, "although that work equalled the expectations which the known talents of its author had excited, the sale of it did not defray by several hundred dollars the actual expenses incurred." The records show that James Hughes was very active and prominent in the early litigation at this bar. He was one of the Captains of

the Lexington Light Infantry from 1791 to 1793; was a Representative from Fayette to the State Legislature for four terms from 1793 to 1796, inclusive, and again for three terms in 1801-'02 and '03. In the County Clerk's office is a book containing "Copies of Certificates" issued by the Land Commissioners for the Kentucky District in 1779 and 1780, on the fly-leaf of which is to be seen James Hughes's bold autograph. Removing from Fayette County, he was, in 1822, elected to the House of Representatives from the County of Nicholas, and died in the same year while holding this office.

The second addition to the Lexington Bar was James Russell, who was admitted on the same day as Mr. Hughes. Mr. Russell, with a numerous family, emigrated to Kentucky from Rockbridge County, Virginia, in 1796. He had served several years during the Revolutionary War in the Rockbridge Artillery; was at the siege of Yorktown and in several battles under Generals Washington and Greene. A land warrant from the State of Virginia was issued to him in consideration of his military services, which warrant, it is said, he never located and would not accept. His connection with the bar seems to have been of but short duration, for he subsequently settled in Franklin County and devoted himself to farming, until his death in 1849. John Crittenden Russell, a grandson of James Russell, is a prominent lawyer and business man of Louisville. The distinguished Col. Wm. Russell, who represented Fayette County in the State Legislature for thirteen sessions, is thought to have been a near relative of James Russell.

On March 22d, 1797, Jesse Bledsoe presented his license and was admitted and sworn as a practitioner at this bar. As he was appointed Circuit Judge of this District by Governor Adair in 1822, he will doubtless receive attention from Mr. Kerr in his paper on the "Bench of Fayette" and we will pass over much

that might be said touching his interesting and highly honored career. Though born in Virginia, he obtained his literary and legal education in Kentucky and was identified during most of his life with this city and county. He was a man of great ability, originality and industry, and was a most powerful speaker. His biographer, Amos Kendall, says of him, that "with the exception of Henry Clay, he was the most eloquent man in Kentucky. His manner was slow and deliberate, his language beautiful, his gestures graceful, and his thoughts communicated with the utmost clearness." Among the handsome portraits which formerly adorned the walls of the Circuit Court room and which were destroyed in the fire of 1897, was one of Judge Bledsoe.

The 17th of July, 1797, witnessed a large accession to the local bar. On that day no fewer than six lawyers were admitted to practice. At the head of the list was Joseph Hamilton Daviess (spelled *Davis* on the Order Book), then in his 24th year. Daviess had previously qualified as an attorney in Mercer county, to which bar he was admitted on September 27th, 1795, and has been claimed as one of the pioneer lawyers of that county, which he had the honor of representing in the State Legislature in the year 1800. But his connection with Lexington and Fayette county, after he settled here permanently in 1801, was close and intimate up to the time of his death, and we may fairly class him among the early members of the Fayette Bar. His education was acquired partly in Danville and partly in Harrodsburg. In 1793 he was a volunteer in a cavalry troop commanded by Major John Adair, which was despatched against the Indians. Returning home from this expedition, he studied law with Col. George Nicholas, then the leading lawyer of the State, and was admitted to the bar as already stated. At the age of twenty-five he had achieved the reputation of being one of the best lawyer

and most powerful speakers in Kentucky. At twenty-six it is claimed he had but two rivals as a public speaker,—Clay and Bledsoe. Besides being a man of extraordinary genius, he was early noted for his extreme eccentricity. In nothing was this more conspicuous than in his whimsical mode of dress. He sometimes appeared in Court in hunting-shirt and coon-skin cap; while, about town, he often wore a kind of uniform consisting of a blue coat with white sleeves, collar and facings. One day you might meet him lounging around in a coat and vest of homespun, with perhaps a slit a foot long on each shoulder, old corduroy breeches, and slipshod, unblackened shoes. The next time he might be arrayed like a prince in the finest broadcloth, made up in the most fashionable style, and then it is said his appearance was superb. It is a tradition that he had a suit of *red* broadcloth made up, just before his departure on his first trip to Washington and the East,

He was the first lawyer from the West to make a speech in the Supreme Court of the United States. His wife, Anne Marshall, was a sister of the great Chief Justice of that Court. December 12th, 1800, he was appointed United States Attorney for the District of Kentucky, retaining the position until George M. Bibb, another distinguished member of the Lexington Bar, was appointed his successor in 1807. In politics he was an ardent Federalist, and this fact, taken together with his independent turn of mind and eccentric habits, estranged him from many of the prominent Democratic(Republican)barristers of his day. His efforts to bring about the prosecution and conviction of Aaron Burr before the United States Court at Frankfort in 1806, was regarded, at the time, as a malicious persecution of an innocent man and greatly injured Davies' popularity and practice; but later events showed that his suspicions were well-founded and completely justified the course he took against that ambitious

and artful conspirator. Although his fame as a lawyer is fully equal to that of any of his associates at the bar, the name of Joseph Hamilton Daviess will be best remembered in connection with the Battle of Tippecanoe, where he met a glorious and heroic death on November 7th, 1811. The fact that he died at the early age of 37 is a good criterion by which to measure the reputation which history shows him to have established. The grief of his fellow *Kentuckians* at his death was deep and universal.

The life of this remarkable man has been the subject of numerous biographies. The State of Illinois, wishing to do honor to his memory, named a county "Jo. Daviess," in order that it might always show what man it intended to immortalize. The State of Kentucky, in 1815, also named a county for him, and a like honor has been conferred by the States of Indiana and Missouri. In the Lexington "Reporter" of Nov. 26th, 1811, will be found a memorial poem on Daviess, composed by Bertrand Guerin, Professor of the French Language in Transylvania University. William Wallace, a native of Lexington, also paid him a glowing tribute in his poem on the "Battle of Tippecanoe," delivered on the battle-field in 1835. Daviess was a prominent Mason and at his death held the office of Grand Master of the Grand Lodge of Kentucky. An eloquent oration on his death by Jesse Bledsoe, a brother Mason, will be found published in full in the Kentucky Gazette for January 14th, 1812. This oration had been delivered by special request in the State House at Frankfort on the 27th of December, 1811, less than two months after Daviess fell. The portrait of Daviess which once hung in our Circuit Court room perished, as did that of Judge Bledsoe, in the destructive court-house fire of 1897.

Of the six lawyers whose admission to the Fayette Bar is recorded under date of July 17th, 1797, none is more

worthy of honorable mention than Allan Bowie Magruder. He was born in Kentucky, probably near Lexington, some time between 1775 and 1780, and died in Opelousas, Louisiana, on the 16th day of April, 1822. He received an academic education, studied law in Lexington, was admitted to the bar here, as we have seen, and subsequently removed to Louisiana. He was a member of the House of Representatives of his adopted State, and in 1812 was elected as a Democrat to the United States Senate, where he served for less than a year. He was the author of "Reflections on the Cession of Louisiana," a work published in Lexington in 1803, and also of a sketch entitled "Character of Thomas Jefferson," which appeared originally in "The Medley," a monthly miscellany printed in Lexington by Daniel Bradford during the year 1803. Before his death he had collected material for a general history of the North American Indians, which was left unfinished. A descendant of his, by the same name, has written a Life of John Marshall, which was published at Boston in 1885 as one of the "American Statesmen Series."

Following the name of Magruder, on the roll of our "Early Bar," comes that of James Brown. James Brown was a brother of the Hon. John Brown, whose conspicuous prominence in the early history of our State, is too well known to require repetition here. The ability of James Brown as a lawyer was of the very highest order, and caused him to be associated upon equal terms with those who were most eminent in the profession in Kentucky; such men as Clay, Bibb, Bledsoe, Hughes, and others, being his associates and, at times, his adversaries at the bar. His wife was a daughter of Colonel Thomas Hart and sister of the wife of Henry Clay. He was the first Secretary of State of Kentucky, receiving his appointment from Gov. Shelby. Upon the purchase of Louisiana, in 1803, he removed to New Orleans,

where he and Mr. Livingstone prepared the Civil Code of Louisiana. He was elected to the Senate of the United States from Louisiana for two or more terms, from 1812 to 1823. In the latter year he was appointed Minister to France by President Adams, and filled that high office for ten years. He came to Kentucky in 1789 and took an active part in the intellectual combats as well as in the Indian warfare which was rife at the time, being in command of a company in General Wilkinson's expedition in 1791. His death occurred at Philadelphia in 1835.

After James Brown comes the name of William McDowell, a worthy son of his distinguished father, Judge Samuel McDowell, whose services to the State, in its infancy, are familiar to all readers of Kentucky history. William McDowell, like James Brown, was a native of Virginia, and was thirty-five years of age when he came to the Lexington Bar. He was a representative from Kentucky in the Virginia Assembly in 1787; became the first Auditor of Kentucky by the appointment of Governor Shelby, and for a number of years he was a member of the State Senate and also of the Lower House, representing the Counties of Mercer and Nelson. He was a man of the highest character and of acknowledged ability, and became an accomplished lawyer and able judge. He married Miss Margaretta Madison, of Virginia, a niece of President Madison. Major John McDowell, an older brother of William McDowell, was very prominent in the early social and political life of Fayette County.

The name we next meet with is that of William Murray. Our information concerning this distinguished lawyer is not so complete as we might wish. In December, 1792, he succeeded Col. George Nicholas as Attorney-General of the State. How long he had been in Kentucky before this we do not know. He represented

Franklin County for one term in the State Legislature in 1798, and hence was a member of that body at the time the once famous Resolutions of 1798 were presented and passed. McClung says, "The only member who spoke against them, and steadily voted, generally alone, against the whole series, was that William Murray, to whom in conjunction with others, the letter of Carondelet (the Spanish Governor of Louisiana) was directed, and with whom Sebastian refused to hold any communication on the subject." A writer, in Collins' History, says of Mr. Murray, "He was a bold and eloquent man; his contemporaries never spoke of him but in terms of unqualified admiration. He was probably the most accomplished scholar among all the eminent men of Kentucky at that day—a lawyer of strength equal to conflicts with George Nicholas, John Breckenridge, and Henry Clay, and in the rare gift of eloquence he surpassed them." Dr. E. D. Warfield, in his historical essay on "The Kentucky Resolutions of 1798," reprints the striking and very able argument delivered by Mr. Murray, as reported at the time, against the introduction of the proposed resolutions, and thus describes the man—"He was a man of high powers, an able lawyer, a clear thinker, and a forcible debater. He grasped the salient points of the controversy with firmness, and if he did not succeed in convincing his audience, he anticipated the general arguments of the party to which he belonged for many years. His bias towards Federalism prevented him from attaining eminence. * * * He was in all things a typical Federalist both in profession and in habits of thought. It would have required a most facile and acute mind, indeed, to handle the arguments against these resolutions with the vigor and ability which he manifested, had they sprung from anything short of deep conviction." In this connection it may not be improper to remark that

on the great questions of Slavery and States' Rights, William Murray and David Rice have proved better political prophets than either George Nicholas or John Breckenridge.

"Judge Murray," as he was called, was a prominent Mason, being the first man to hold the office of Grand Master of the first Grand Lodge of Kentucky, after its formation in the year 1800. He emigrated to Nachez, Mississippi, about 1803, and died there on August 9th, 1805.

The last of the six lawyers, who were admitted simultaneously to the Lexington Bar on July 17th, 1797, was William Clarke. It has been somewhat difficult to determine positively just who this William Clarke was, but all things considered, he seems to answer fairly well to a lawyer of this name who is described in Appleton's Cyclopaedia of American Biography. Accepting the identity as established, we may say that William Clarke was an educated jurist, born about 1760. President John Adams appointed him in 1800, Chief Justice of the Territory of Indiana, from which we may infer that he was a Federalist, and he was afterwards commissioned as the second Governor of the Territory of Missouri. He attained a position of great influence in all the country West of the Mississippi.

On July 20th, 1797, George M. Bibb became a member of the Lexington Bar. For fifty years he was one of the foremost characters in the judicial and political history of Kentucky. He was the son of an Episcopal Clergyman of great learning, and was born in Virginia in 1776. He was well educated, being a graduate of both Hampden-Sidney and William and Mary Colleges. Having studied law, he practiced for a short time in his native State and in 1797 removed to this city. He at once attracted business and was soon numbered among the ablest and most profound lawyers in the State. His

superior qualifications won him frequent official honors. Appointed a Judge of the Court of Appeals in 1708, by Governor Greenup, in the following year he was made its Chief Justice by Governor Scott. He resigned his high trust in 1810, and in 1811 was elected to the United States Senate, where he remained until 1814, when he again resigned. On his retirement from the Senate. Judge Bibb resumed the private practice of law in Lexington and in 1816 removed to Frankfort where he was connected with the most important litigation in the Courts of that city. He was, perhaps, the most prominent lawyer who espoused the cause of the "Relief" and "New Court" parties. In 1827 he was again appointed Chief Justice by Governor Desha and filled the office until December 23d, 1828, when he once more resigned to accept a seat in the United States Senate, to which he was elected for a full term of six years. From 1835 to 1844 he presided as Chancellor of the Louisville Chancery Court, but resigned this office to become Secretary of the Treasury in the Cabinet of President Tyler. The latter part of his life was devoted to the practice of law in the District of Columbia, chiefly in connection with the Department of the United States Attorney-General. He was the first and one of the best of the reporters of the Kentucky Court of Appeals, appointed by the Governor, and his reports, in four volumes, include opinions from 1808 to 1817. A biographer has said of him—"He was a profound scholar and great mathematician as well as an eminent jurist, and in public and professional life, deservedly ranked among the truly great men of his time." He died in 1859.

Next in the order of admission to the Lexington Bar comes the name of Patterson Bullock, Esquire, who on November 22d, 1797, "produced in Court a License, and, on his motion, was permitted to practice as an Attorney

at Law in this Court, and thereupon took the several oaths by Law prescribed." Concerning the history of this man, we know absolutely nothing, but it is altogether likely that he was a member of the large and influential family of the same name, which has figured prominently in Kentucky history from the earliest times. One, Leonard Henley Bullock, was a partner in the Company, headed by Judge Richard Henderson, which sought to establish at Boonesborough, a paternal system of government under the name of "Transylvania." Rice Bullock, as we have mentioned, was a member from Jefferson County in the Virginia Convention of 1788, which ratified the Federal Constitution. Hon. Edmund Bullock was a Representative from Fayette County in the Kentucky House of Representatives for six sessions, from 1792 to 1798, and during the last three years of this service was elected and presided as Speaker of the House. The "Resolutions of '98," (already referred to,) which passed the House of Representatives on November 10th, 1798, were signed by him in his capacity as Speaker. Another Fayette County man, the Hon. Buckner Thruston, a distinguished lawyer and Judge, at that time Clerk of the Senate, also affixed his signature to these Resolutions. For twelve consecutive years, from 1805 to 1817, Edmund Bullock was the sole Representative from Fayette County in the State Senate. In 1816 while Speaker of the Senate, he officiated as Acting Lieutenant-Governor under Governor Slaughter. His son, Judge William Fontaine Bullock, was for many years a leading lawyer of the Louisville Bar, and for nine years Judge of the Jefferson Circuit Court. The descendants of Waller Bullock, a first cousin of Edmund Bullock, have been closely identified with the history of this County, and Wingfield Bullock, another cousin, and his descendants, have been conspicuous in public life in other parts of the State. We may readily believe, therefore, that the

unidentified Patterson Bullock, whose name appears enrolled upon our records among the most gifted lawyers of his time, was fit to rank with the worthiest of his distinguished kinsmen.

On November 23d, 1797, the day after Patterson Bullock was admitted, Isham Talbot made his debut at our bar. Mr. Talbot was born in Bedford County, Virginia, in 1773, and while quite young, came with his parents to Kentucky. On arriving at manhood he studied law under Col. George Nicholas, the preceptor of so many of the young law students of that day, and, after coming to the bar, commenced the practice of his profession, it is said, at Versailles. Soon afterwards he moved to Frankfort where he took a prominent place at the bar. His contemporaries and rivals in Frankfort were such men as Clay, Daviess, Bibb, Bledsoe, Rowan, Pope, and others we have already mentioned. Mr. Talbot was elected to the State Senate from the County of Franklin in 1812, and while holding this office was elected in 1815 to the United States Senate over Judge Benjamin Mills, to fill the vacancy caused by the resignation of Jesse Bledsoe. By re-election he continued a member of the United States Senate until 1825. Isham Talbot has, in the estimation of contemporary writers, always been ranked as one of the most accomplished speakers and most brilliant lawyers of his generation. It is said of him that his rapidity of utterance was extraordinary. He once argued a case before the Supreme Court of the United States, and spoke for four hours; his address was marked by impassioned eloquence, his words flowed like a torrent, and his velocity of speech was a topic of comment with the Judges after adjournment. Justice Washington wittily remarked: "A person of moderate wishes could hardly desire to live longer than the time it would take to repeat deliberately that four-hour speech

of Mr. Talbot's." His long career in the United States Senate reflected credit upon the State of Kentucky, and the reports of the debates of that body are said to bear ample proof of his eloquence and patriotism. He died at "Melrose," his residence near Frankfort, September 21st, 1837.

The last of the thirteen names which head the list of lawyers at the Fayette Bar is that of Henry Clay, who was admitted to practice before the Lexington District Court on March 20th, 1798. The history of the life of Mr. Clay is one of the most valued possessions of our common country, and is known to this community far better than I could tell it. When he was sworn in at this bar, he had not yet reached his twenty-first birthday, and from that time until the day of his death, some fifty-four years later, his name and his fame were inseparably linked with the glories of Lexington and the perennial beauty of his beloved Ashland. He came to Kentucky in the very nick of time. The extraordinary talents of its public men had already attracted the gaze of the nation and commanded recognition from every quarter of the country and from every department of the Government. During the more than fifty years that he figured in public life, Henry Clay unquestionably did more than any other single Kentuckian to preserve to the State the commanding position, which its early leadership had secured. He was elected to the Legislature from Fayette County in 1803, and re-elected to every session until 1806. In that year he was elected to the United States Senate to fill out an unexpired term. In 1807 he was again elected to the Legislature and made Speaker of the House; was re-elected and served until 1809, when he was again elected United States Senator to fill a vacancy caused by the resignation of Hon. John Buckner Thruston, and served for two years. In 1811, on his retirement from the Senate, he took his seat in

the Lower House of Congress in Washington as the Representative from the Ashland District and was re-elected to the Congress of 1813-15, but in 1814 resigned on being appointed one of the Commissioners to negotiate a treaty of peace with England. He was again elected and served in Congress from 1815 to 1820, and from 1823 to 1825. He was elected Speaker of the House during each term of his service, and has the distinction of being made Speaker upon his first entrance as a member and of having occupied the Speaker's chair throughout his entire service in the House. In 1825 he entered the Cabinet of President John Quincy Adams as Secretary of State. He retired from office in 1829 and engaged in the practice of his profession. In 1830 he was elected United States Senator for a full term by the Legislature of Kentucky, and re-elected for a second term in 1836, retiring in 1842, when he declined re-election. In 1849, when the storm of disunion was threatening, he was again elected to the Senate, and died in 1852 while filling this office. He was three times the nominee of his party for the Presidency and three times a candidate for the nomination.

Where, in all the history of our country, shall we find a more astonishing record than this? In the number and importance of the offices held by him, his career was matched, if at all, only by that of Bibb and Barry.

"When Mr. Clay entered upon the duties of his profession," says a writer in Collins' History, "the Lexington Bar was noted for its talent, numbering among its members some of the first lawyers that have ever adorned the legal profession in America. He commenced the practice under circumstances somewhat discouraging, and, as appears from his own statement, with very moderate expectations. His earliest efforts, however, were attended with complete success; his reputation spread rapidly and, to use his own language, he

‘immediately rushed into a lucrative practice.’ This unusual spectacle is to be ascribed mainly to Mr. Clay’s skill as an advocate. Gifted by nature with oratorical genius of a high order, his very youth increased the spell of that potent fascination which his splendid elocution and passionate eloquence threw over the public mind, and led the imagination a willing captive to its power. The latitude customary and allowable to an advocate in the defense of his client, the surpassing interest of the questions at issue, presented an occasion and a field which never failed to elicit a blaze of genius before which the public stood dazzled and astonished.” Mr. Clay himself, in his touching valedictory addressed to the United States Senate in 1842, said, in allusion to his early experience at this bar and his subsequent career in Kentucky :—

“I emigrated from Virginia to the State of Kentucky now nearly forty-five years ago ; I went as an orphan boy who had not yet attained the age of majority ; who had never recognized a father’s smile, nor felt his warm caresses ; poor, penniless, without the favor of the great, with an imperfect and neglected education, hardly sufficient for the ordinary business and common pursuits of life ; but scarce had I set my foot upon her generous soil when I was embraced with parental fondness, caressed as though I had been a favorite child, and patronized with liberal and unbounded munificence. From that period the highest honors of the State have been freely bestowed upon me ; and when, in the darkest hour of calamity and detraction, I seemed to be assailed by all the rest of the world, she interposed her broad and impenetrable shield, repelled the poisoned shafts that were aimed for my destruction, and vindicated my good name from every malignant and unfounded aspersion. I return with indescribable pleasure, to linger a while longer, and mingle with the warm-hearted and whole-

souled people of that state ; and when the last scene shall forever close upon me, I hope that my earthly remains will be laid under her green sod with those of her gallant and patriotic sons."

The limits of this occasion forbid that I should go beyond the list of thirteen names obtained in the manner I have indicated. The high type of the men constituting the "Early Bar of Fayette County," is evident from the sketches which have been given. This imperfect survey will suffice to show the general average of the bar and it will show that that average was very high. All were well-educated, all possessed of high and worthy aspirations, and nearly all endowed with original and superior talents. If beside these names of Hughes and Russell and Bledsoe and Daviess and Magruder and Brown and McDowell and Murray and Clarke and Bibb and Bullock and Talbot and Clay, we should place the names of Nicholas and Breckenridge and Barry and Pope and Wickliffe and Robertson and Menifee and Marshall and Pindell and Payne and Harrison and Houston and Johnson and Kinkead and Preston and Hanson and Humphreys and Boswell and Beck and Buford and Hunt, and a score—yea, a very host—of other great lawyers and teachers, who made this Bar and the Law School of Old Transylvania so illustrious, we might well pause and exclaim in despairing accents—"We ne'er shall look upon their like again !"

I would that I might draw aside the curtain and present to you in all their youthful prime and vigor this magnificent galaxy of men. With the courage begotten of sires who had shared in every battle from Bunker Hill to Yorktown, and who had breasted every danger in the yet untrodden West ; with an unquenchable thirst for liberty to the individual as well as to the State ; with an unshakable faith in their own destiny and a high scorn for everything that was mean and low and con-

temptible in human conduct ; these superb sons of Virginia gathered at this distant outpost of civilization and by their unselfish and collected efforts reared upon this spot a standard of personal and professional culture which has not been paralleled since the world began.

It was said by an old Greek that he thanked the gods above all for three things,—first, that he was born a man and not a woman ; second, that he was an Athenian ; and third, that he had lived in the Age of Pericles. Might I be allowed to offer a similar prayer, I would thank God, first, that I, a man, should have been thought worthy of the woman I best love ; second, that I was born a Kentuckian ; and third, that I should live in an Age made possible and forever memorable by the patriotic, high-minded and Titanic labors of those from whom we are all in some part descended. Let us see to it that the grandeur and the glory of that elder day shall in some degree be perpetuated in our own ; let us guard and cherish and strive to transmit to those who shall come after us the priceless heritage of character and of service which our predecessors have bequeathed. Let the high ideal of this Bar, raised aloft for it in the Pioneer Age by the imperial mastership of master-minds, be kept unsullied and unimpaired, and may those words of doom never darken the portals of this Court—“Ichabod,—their glory is departed !”

THE BENCH OF FAYETTE COUNTY PRIOR TO 1860.

Mr. Charles Kerr then delivered, in conclusion, the following address.

Nowhere and under no circumstances, has that inborn Anglo-Saxon reverence for the law's supremacy been more strikingly manifested than in the early settlement of Kentucky. Notwithstanding the fact the great Appalachian barrier stood between its hardy settlers and that civilization which, after a century and a half of hardships and privations, had populated the Atlantic seaboard; notwithstanding they were surrounded on every hand by a savage and implacable foe, against whose ravages there must of necessity be some concerted action; nevertheless isolated—alone—in a sparsely settled and unprotected community, unhampered by the restraints which established society demands, for the regency of law and the establishment of order there was an exemplified veneration almost idolatrous.

As we sit from day to day in this magnificent structure surrounded by all the luxuries and conveniences generous wealth and human genius can bestow, the most vivid imagination could scarce call into being those rude environs where shire court justice was first dispensed. If back to that primitive time inquisitive fancy tempts thee, conjure to thyself our genial Freckman imploring divine interference in behalf of the unborn Commonwealth and "the honorable court," in a rough log structure, erected in the midst of a well-ventilated cow lot. And if such a picture taxes not the imagination then fix in your mind the form of our beloved judge sitting in the rude Calvinistic pulpit of old Zion Church, balancing equities between John Doe and

Richard Roe, the principal litigants of that time, and if to thy satisfaction these scenes recur, then indeed hast thou a fair conceit of justice "in that elder day." When old John Bradford sought the news of the courts for some forthcoming edition, he slowly wended his way along a sinuous path, dignified with the title of Main Street, to a rude log structure, chinked with mud, which stood adjacent to the lot upon which Miller Bros.' store now stands, and while the old court house, which was the grandfather of the present structure, was being built, court was held in the old "Zion" Church, which stood on the corner of Short and Walnut streets, where city school No. 1 now stands.

To the better appreciate the early Bench of Fayette County, it is necessary to take a cursory glance at the judicial system which prevailed in Kentucky at that time, than which there was never a more complex.

The first constitution was adopted in 1792, the second in 1799, and the third in 1849. The only permanent court established by the first and second constitutions was the Court of Appeals, which had original jurisdiction in all matters involving the titles to land derived from Virginia, and in certain fiscal matters in which the interest of the State was involved. Under these constitutions the establishment of inferior courts was left solely to the discretion of the legislature. Between 1792 and 1796 the quarter sessions court, county court and justices court were the only inferior courts of original jurisdiction. By an act of the Legislature, passed in 1795, the original jurisdiction of the court of appeals was taken away, and by the second constitution, which went into effect June 1, 1800, this court was given appellate jurisdiction only, except in a few specified cases. In addition to the inferior courts above enumerated, there was also established by the legislature a court of Oyer and Terminer, for the trial of criminal cases only. The courts of quarter session were

established in each county and had general jurisdiction to hear and determine all matters at common law, or in chancery, within their respective counties, except where the other inferior courts had exclusive jurisdiction. In 1795 the legislature established what were called district courts. By the act creating these courts Kentucky was divided into six districts, for the holding of courts in which six judges were to be appointed by the Governor. These six judges met annually in Frankfort and mutually assigned among themselves the districts where they would respectively hold court during the ensuing year, two being assigned to each district. These courts had almost unlimited jurisdiction in all matters, both at common law and in equity, where the amount in controversy was not of less value than £50. In 1802, after the adoption of the second constitution, circuit courts were established in the place of the old quarter sessions and district courts, with jurisdiction in all matters, both at common law and in chancery, within their respective circuits, where the amount in controversy was not of less value than £5, or one thousand pounds of tobacco. The act creating the circuit courts divided the State into nine circuits, with a separate presiding judge for each circuit, who should hold court in each county at certain stated periods. The act also provided that from each county there should be appointed two assistant judges, who were not even required to be lawyers. Under this complicated system the circuit judge, or the two assistants, or the circuit judge and one assistant, were sufficient to constitute the court, except that the presiding judge alone could not try criminal cases of a felonious character, where the penalty was death or confinement in the penitentiary. If, however, the two assistants were absent, the prisoner was entitled to bail as a matter of right, and if absent at the next term the prisoner was discharged. It was very soon discovered that these assistants did not assist, since

they had the power to reverse or overrule any decision of the presiding judge, as a consequence of which this system was soon abandoned for what is practically our present circuit court system. The salary of the judges was paid in State script, and amounted to about \$750 per annum, varying according to the value of the script, while the assistants were paid \$2 per day for each day they could induce the clerk to certify they were present.

Thus it will be seen the early court judges, who held court in this county, could have been appointed from any part of the State, and consequently may have been entirely free from local associations or environments.

In their order let us now consider the various judges who have presided over this court.

SAMUEL M'DOWELL.

Of the descendants of those who participated in what may be termed the formative period of our State, few have received a richer inheritance of ennobling virtues than those of Judge Samuel McDowell. Stripped of that romantic glamour which more and more envelopes a period from which we are so fast receding, there are yet in the life of this truly remarkable man passages that would adorn the annals of any people and be worthy the ancestral fame of Boyne and Londonderry. Born in the Colony of Pennsylvania October 29, 1735, he was thrown upon his own resources at the early age of eight, by the death of his father, John McDowell, killed in an Indian massacre near the present site of Lexington, Va. The French and Indian wars aroused the martial spirit of young Samuel, who was among the first to enlist, and participated with Braddock in his untimely defeat. In this unfortunate war he made the acquaintance of Washington, through which was formed a friendship which terminated only in death (and we hope not then.) In the revolutionary struggle he was among the first to volunteer, and served throughout that entire war, participating

in the surrender at Yorktown, and was discharged under the rank of Colonel. In 1783 he removed to Fayette County, which then comprised nearly one-third of the entire State, and in conjunction with Colonel Thomas Marshall, a kinsman, was appointed surveyor of public lands, an appointment which at that time was given only to a man of unquestioned honor and integrity. In that same year he was appointed judge of the first district court in Kentucky, which embraced what was then known as the District of Kentucky, and is not to be confounded with the district courts subsequently established. It was this appointment which distinguished him as "Judge" Samuel McDowell. His associates in office were John Floyd and George Muter, and the court over which they presided was held in Harrodsburg, which place McDowell at that time seems to have chosen as his residence. It was about this time there began to assemble in Danville, the convention town of the State or District, as it was then known, that series of historic conventions, ten in number, which had for their object the separation of Kentucky from the parent State of Virginia. Of all these conventions, successively, McDowell was made president. Reasons for this repeated honor are thus expressed by a contemporary writer :

"His social position, his solid attainments, his matured convictions, his high character, his judicial temper, his popular manners, his fine presence, his peculiar and varied experience of public life, combined to qualify him admirably for the position, and to center upon him the attention, confidence and respect of the able men who were associated with him in the early throes of the inchoate State."

These conventions not only marked but in a large measure dominated the future policies of the State, and gave it a position in the nation second to no other. The manner in which separation was to be accomplished was

one of great moment, and involved some very delicate and intricate matters, which this generation can not appreciate. Already the question of Spanish intrigue for the control of the Mississippi, was assuming national proportions, and since Kentucky was the key to the accomplishment of that design, the position she would take became one of vital importance. The delegate from Fayette, General James Wilkinson, was a brilliant, captivating man, and although accused of complicity in the Spanish plot, does not seem to have forfeited the confidence of his people. Much that has been written to incriminate a number of the prominent delegates to those conventions, and to accord to them ulterior purposes, is unwarranted and unjust. McDowell was a strong federalist, and opposed any separation which did not have for its end admittance to the union of states already made. The somewhat intemperate and injudicious resolutions of Wilkinson were opposed by him, and it was largely through his influence they were finally defeated, as the result of which an entirely harmonious separation was accomplished. The first constitutional convention met in Danville and Judge McDowell was likewise called to preside over its deliberations and had much to do with the adoption of that instrument, the text of which is generally conceded to Geo. Nicholas, one of the very ablest of the early Kentucky lawyers. Although it was soon supplanted, portions of it have been embraced in nearly every State constitution since that time. When, in conformity with the provisions of this constitution, the legislature divided the State into judicial districts, McDowell was one of the first judges named by old "King's Mountain" Shelby, and was for many years the presiding judge of the Lexington district, his associate usually being either Buckner Thruston or John Coburn. That his judicial appointments should have come, the one from Washington, with whom

he had served at Braddock's defeat, and the other from General Shelby, under whom he had served at Point Pleasant, peculiarly testify to the high estimation in which he was held by them when it is remembered he was not a practicing lawyer, and it is not known that he ever read a single law book. He continued upon the bench during the district court period, and was appointed first presiding judge of the circuit court under the act of 1802, which position he held for a number of years thereafter.

He was married in early life to Mary McClung, by whom he had eleven children, one of whom, Dr. Ephraim McDowell, ranks among the world's greatest physicians. Another son was the first Marshal of Kentucky under appointment of Washington and the same position was held by his great-grandson, the late Major H. C. McDowell, and that one of his descendants should have been the mother of James G. Birney, whose candidacy for the presidency in 1844, was the means of defeating Henry Clay, who began the practice of law before McDowell, and the descendants of each of whom have closely inter-married seems to have the irony of fate.

The political convictions of Judge McDowell seem to have been shared by all of his descendants, one of whom was a prominent general in the civil war. In every relation of life he was a gentleman of the old type; personal considerations never swerved him from the line of what he conceived to be duty, and his place among the early builders of our State is deservedly high.

JOHN COBURN.

One of the first judges allotted to the Lexington district, and one of the associates of Judge McDowell, was John Coburn, a native of Philadelphia. As a youth he studied law with the celebrated Luther Martin, of Baltimore. On the advice of Martin, Coburn emigrated to

Kentucky, locating in this city in 1784, where, singularly enough, he abandoned his profession and embarked in the mercantile business, from which he acquired quite an estate. Soon after his arrival in Kentucky he married Miss Mary Moss, of this county. In 1794, before the days of railroads and steamboats, believing with many others that Maysville would be the foremost mercantile city of the State, he moved to that place, where he continued his mercantile pursuits. In 1796 he was appointed one of the six district judges by Governor Shelby, and was frequently assigned to the Lexington district. Upon the re-organization of the courts in 1802 he was assigned to the Mason circuit, where he served until about 1805. He was offered the judgeship of Michigan by Jefferson, but declined, accepting later the judgeship of the Louisiana district, with headquarters in St. Louis. This position was filled by him with marked ability, and with entire satisfaction to the inhabitants of that newly acquired territory. He resigned his position later and was appointed by President Madison internal revenue collector for the Maysville district, which was the last public position held by him.

Judge Coburn was a man of strong convictions and unquestioned integrity, and enjoyed the confidence and esteem of all who knew him. He was a member of the Danville convention which met in 1785, and favored separation from Virginia. In conjunction with Robert Johnson, he was employed to settle the boundary line between Kentucky and Virginia, a very exhaustive report upon which was written by Coburn. He was appointed a member of Governor Shelby's staff in 1813, but soon resigned. He was a great friend and admirer of Daniel Boone, and it is due to his efforts, probably more than to all others, that Congress was induced to make Boone a grant of one thousand acres of land.

Judge Coburn lived in the days of the pamphleteer,

and no one of his contemporaries excelled him in that means of disseminating political convictions. He was an ardent Democrat, and was the personal friend of Madison and Jefferson. He declined the position of United States Senator in favor of his friend and associate, John Breckenridge. Judge Coburn died in February, 1823.

BUCKNER THRUSTON.

One of the ablest of the early judges that sat on the Fayette bench was Buckner Thruston. He was the son of one of Virginia's "fighting parsons," the Rev. Colonel Charles Mynn Thruston, who married in 1760, Miss Mary Buckner, and settled at his ancestral home, "Lansdowne," at Gloucester Point, Gloucester County, Virginia. Here his three children by his first wife were born. Buckner, the second son, was born February 9, 1764. Mrs. Thruston died August 18, 1765, shortly after the ordination of her husband. His second wife, to whom he was married in 1766, was Miss Ann Alexander, a second cousin of his first wife. In that same year he moved to Shenandoah Valley, settling at "Mt. Zion," near Winchester, in what was then Frederick, but is now Clark County. He was one of the most prominent men of the valley, and dispensed both law and gospel for the entire community. It was here young Buckner was reared. At the age of twenty he was sent to William and Mary's College, at Williamsburg, where he remained for four years. He then studied law and was admitted to the bar in 1787. The following year, in company with his younger brother, Charles, he moved to Kentucky and settled at Lexington, and at once entered upon the practice of law. In March, 1795, he married Miss Jannette January, daughter of Peter January, of Limestone, now Maysville. In 1796 he was appointed one of the first six district judges of Kentucky, and remained upon the bench for nine years, often serving in the Lexington district. In 1800 he was one of the three commissioners appointed by Kentucky to confer

with a similar commission appointed by Virginia to settle the boundary line between the States. He practiced law in Lexington seventeen years. In 1804 he was elected United States Senator, taking his seat March 4, 1805. Before the expiration of his term he resigned his seat, and Henry Clay was elected to fill the unexpired term. Among the first appointments made by President Madison was that of Judge Thruston to be Judge of the United States Court for the District of Columbia, which position he held for thirty-six years, dying upon the bench. In 1805 he was appointed by President Jefferson judge of the territory of Orleans, as it was then termed, but was elected Senator before entering upon his duties. He was clerk of the first State Senate which convened in Kentucky, and in his official capacity signed the famous "Kentucky Resolutions." His appointment as judge of the District of Columbia removed him from his Kentucky associations, as he thereafter resided permanently in Washington, where his large and interesting family became prominent members in the social circles of Washington. Most of the time Judge Thruston was serving upon the district bench he was associated with that eminent jurist, Judge William Cranch, who compiled the early reports of the United States Supreme Court.

Judge Thruston was a man of liberal education, of discriminating literary taste, and scholarly attainments. He was the personal friend of such men as Clay, Livingston, Ingersoll, Webster, Crittenden, Gallatin, etc. His son, Charles, was a Brigadier General in the Civil War, and one of his daughters married Admiral Powell of the United States navy.

Judge Thruston was also the first circuit judge appointed for the Lexington district under that system which required two assistants, who might or might not be lawyers. The men appointed from the county to serve with him were Robert Todd and Thomas Lewis.

Robert Todd was one of the earliest settlers in Kentucky, having assisted in building the fort known as "McClelland's," at Royal Spring, near the present town of Georgetown. In the attack which was made on this fort in December, 1776, he was severely wounded, but recovered. In 1777 he assisted in strengthening the fort at Harrodsburg. He settled finally at Lexington, and was one of the trustees of the city. He was a member of the first convention which met at Danville in 1785, and was also a member of that famous society for the dissemination of useful knowledge. He was one of the delegates selected to fix the seat of government, and notwithstanding the fact that he was the owner of 1,000 acres of land adjoining the city limits of Lexington, he favored Frankfort. This fact, as has always been supposed, influenced him to vote for Frankfort, in order to escape any adverse criticisms. For the good of the State and Lexington, it is much to be regretted that he ever owned that 1,000 acres. He represented Fayette County in the legislature from 1792 to 1796, and was one of the first Senate electors. He served as assistant judge for about eight years, and was one of the ablest who served in that capacity.

Thomas Lewis, the other assistant, was likewise one of the earliest settlers of Lexington, having been a revolutionary soldier of distinction. In 1792 he was a member of the legislature from Fayette County, and was one of the first Senate electors. He was a member of the constitutional convention of 1792, which met at Danville, representing Fayette County. In 1803, when the records of the county were destroyed, he was one of the committee appointed to restore them, as far as possible. He had all of them recopied, exactly as they had been left by the fire, an exhibition of which is now in our clerk's office. He only served a short time as judge.

JOHN ALLEN.

Major John Allen was assigned to the Lexington district in 1801. He was born in Virginia in 1749. At the commencement of the revolution he enlisted on the side of the colonies, and was a very gallant soldier. At the close of the war he entered the law office of George Nicholas, who later moved to Kentucky, and upon whose advice young Allen also removed to this State, accompanied by his personal friend and companion, Judge Sebastian, in 1786. Two years subsequent to his arrival in Lexington Allen moved to Paris, "then containing but a few log cabins." After the separation from Virginia, and admission to the Union, Allen was selected as one of the commissioners to locate the seat of government. He was appointed district judge in 1801, and the first circuit judge of the district in 1802, by Governor Garrard. While presiding as district judge there was associated with him, for two or three terms of the court, Judge J. G. Hunter, of and concerning whom we have been unable to get the slightest trace. Judge Allen died in 1816. It has recently been said of him that "in point of personal worth and integrity of character, Judge Allen was not inferior to any man in Kentucky, and to but few in point of intelligence and ability."

BENJAMIN HOWARD.

Benjamin Howard, a native of Fayette County, was appointed presiding judge in 1806. From an examination of the court records he appears to have served only one year. In 1807 he was elected to Congress from this district, which position he held until 1810, when he was appointed by President Jefferson as territorial governor of Missouri. He was among the first to enlist in the war of 1812, and served with distinction, but was taken ill and died in St. Louis in 1814. He was the son of John Howard, who settled in Boonesboro in 1775. His father, John Howard, was in many respects a man of

extraordinary parts. His mental force was equaled only by his physical strength and endurance. At Guilford Court House he was wounded five times, two of which were pronounced fatal, yet he recovered and lived to the extreme age of 103 years, and died from the effects of having been thrown from his horse. For eighty years he was a member of the Presbyterian Church, and was a Calvinist of the Calvinists. The Howards are descendants of the House of Norfolk, one of the oldest estates in England.

The associates of Judge Howard on the bench were Henry Payne and Robert Todd, two of the early settlers and land owners of the county.

JOHN MONROE.

One of the early judges of the court, concerning whom we have failed to get the slightest account, was John Monroe, appointed in 1807, and served a very short time. He appears to have belonged to the large Monroe connection of Kentucky, and to have been a relative of President Monroe and Judge T. B. Monroe, and was a man of far more than ordinary ability. His associates on the bench were Henry Payne and Robert Todd.

WILLIAM WARREN.

Another judge who presided over the court for a short time was William Warren of Scott county. In the history of Scott county Judge Warren is referred to as one of the very earliest attorneys who practiced at that bar, and is said to have been one of its ablest. He was a collateral relation of Dr. Warren, who was in the battle of Bunker Hill, and was of New England origin. He was appointed judge of this circuit, and held three terms of court in this county. His associates on the bench were John Parker and John McDowell. John Parker was one of the original settlers of the county, and was a member of the legislature from the county from 1795 to

1798, he and McDowell serving at the same time. John McDowell was one of the trustees of the city of Lexington in 1781, and a member of the convention which framed the second constitution, and was one of the Senate electors in 1792.

BENJAMIN JOHNSON.

Benjamin Johnson was a native of Scott County, and belonged to that large family of Johnsons who settled in that county, many of whom have taken a conspicuous part in the history of the country, notably his two sons, Richard M. Johnson and John T. Johnson. Judge Johnson was one of the early practitioners at the Georgetown bar, and was appointed judge of the court in 1812, succeeding William Warren, and served until the appointment of Major Barry in 1816. Of the details of his life we have been unable to get any satisfactory account. He appears to have been the first of the circuit judges in this county who served without an assistant, and it was about this time these assistants fell into disuse. Judge Johnson has the distinction of being the father of three sons who were each members of the National Congress.

WILLIAM T. BARRY.

Next in succession was William T. Barry. Of this distinguished lawyer it has been said that he held more positions of honor and trust than any citizen Kentucky ever produced, particularly so when it is remembered he died at the early age of 51. In the thirty active years of his life after he was admitted to the bar he served as an officer in the war of 1812, was a member of the Kentucky Legislature, member of Congress, Speaker of the Kentucky House of Representatives, United States Senator, Judge of the Circuit Court, State Senator, Lieutenant Governor, Secretary of State, Postmaster General under Jackson, minister to Spain, and for a time professor of law in Transylvania University. He was born in

Lunenburg County, Virginia, in 1784. His parents who were quite poor, moved to Kentucky when young Barry was only 12 years of age, settling in Fayette County, subsequently moving to Jessamine. By dint of the most rigid economy on the part of his parents, he was enabled to graduate at Transylvania University, after which he began the study of law with the Hon. James Brown, brother-in-law of Henry Clay, and subsequently minister to France. His legal studies were completed at William and Mary's College, Virginia. He began the practice of law in Lexington in 1805, and was elected to the State Legislature in 1807, holding thereafter in succession the various positions above mentioned. In 1816 he resigned his seat in the United States Senate to accept the position of Judge of the Circuit Court, probably the only instance of that kind in the history of the country. He occupied the position of judge but a very short time. His election to the office of Lieutenant Governor in 1820, and the universal applause with which he was everywhere greeted, proclaimed him foremost in the affection of the people. It was during the administration of Desha the "old" and "new" court controversy was had, and the position taken by Judge Barry for a time weakened rather than strengthened him in the estimation of the people, and was the real cause of his defeat for Governor in 1828. At the instance of Governor Desha he accepted the appointment of chief justice of the "new court," and allied himself with the dissatisfied element which sought relief in fiatism. At this distance it is hard to determine how it was possible for Major Barry to have taken the position in this matter that he did. In politics he was an intense Democrat, and in the Adams-Clay alliance threw all his energy and influence into the fight against Mr. Clay, and made the race for Governor against Metcalfe, who was supported by Clay. Although

the State was carried by Jackson, Barry was defeated, evidently the result of "court" struggle. The fight made by Barry for the ticket was awarded by Jackson with a cabinet appointment. As Postmaster General he aroused considerable animosity, but the office was conducted with more efficiency than it had been since Ben Franklin. His labors in this office told upon his naturally frail constitution to such an extent that he was compelled to resign. In such high esteem was he held by President Jackson that he was at once tendered the position of minister to Spain, in the hope that that salubrious climate would restore the impaired, but it was too late, and he died in Liverpool on his way to Madrid. In personal appearance he was small and insignificant looking, weighing scarcely 100 pounds, but in point of intellect he was the peer of the ablest of his contemporaries.

On a plain and unpretentious monument, which formerly stood in the south corner of our court house yard, there was carved this tribute to his worth :

"His fame lives in the history of his country and is as immortal as human liberty and glory," which is more than can be said for the monument.

His remains were brought to Kentucky in 1854, and interred in the Frankfort cemetery. On the occasion of the re-interment the brilliant O'Hara delivered an oration, which he concluded as follows :

"Let the marble minstrel rise to sing to the future generations of the Commonwealth the inspiring lay of his high genius and lofty deeds. Let the autumn wind harp on the drooping leaves her softest requiem over him ; let the winter's purest snow rest spotless on his grave ; let spring entwine her brightest garlands for his tomb, and summer gild it with her mildest sunshine, and let him sleep embalmed in glory till the last trump shall reveal him to us all radiant with the halo of his life."

BENJAMIN MILLS.

Judge Barry was succeeded on the bench by Benjamin Mills, of Bourbon County. Judge Mills was born in Maryland in 1779. His family moved to Washington, Pa., while Mills was quite young. He graduated at Washington College, and was for a while its president. He first prepared himself for the medical profession, but changed for the law. About the time his father moved to Bourbon County, at which time the subject of this sketch was twenty-six years of age, he began the practice of law in Paris. Entering the profession at a time when his mind was thoroughly matured, he soon acquired an extensive and lucrative practice. For a number of years he represented Bourbon County in the lower house of the legislature, and took quite a prominent part in the legislation of the day. In 1816 he was a candidate for United States Senator, and failed of election by only three votes. The next year Governor Slaughter appointed him judge of the Montgomery Circuit, and the year following, upon the resignation of Judge Barry, by unanimous request of the Lexington bar, he was transferred to the Fayette circuit. In 1820 Governor Slaughter appointed him associate justice of the court of appeals, Judge Boyle being chief justice and Judge Owsley the other associate. This triumvirate marks one of the most critical, as well as the most exciting periods in the history of our State, and to their commanding ability, courage and integrity Kentucky owes its escape from what threatened to be civil strife. The relative functions of the legislative and judicial branches of the government had never been satisfactorily settled, and there was still a large class of citizens who believed the legislative was superior to the judicial, notwithstanding the very able decisions rendered to the contrary by Chief Justice Marshall, and when the question was met in Kentucky it is to her everlasting honor she had three such able and intrepid judges to make

decision. Judge Mills was an intense partisan, but when it came to a question of constitutional government and honest money on one side against fiatism and the unrestrained masses on the other, although led by such men as Barry, Bledsoe and Desha, he never hesitated, but stoutly stood by and defended the "old court" party. But reason and order triumphed, as they always do, and the "new court" party was defeated at the subsequent election.

Judge Mills resigned in 1828, and resumed the practice of law at Frankfort, where he died December 6, 1831, from an apoplectic stroke.

Personally Judge Mills can not be said to have been a popular man, so far as the masses are concerned. He cared nothing for popular applause, and was influenced solely by a firm and inflexible sense of right, which, if it did not command the affections of the people, never failed to win their respect and approbation. He was a cogent, forcible speaker, and a clear and logical writer, and justly ranks among the most eminent of Kentucky's lawyers. His opinions, while judge of the court of appeals, contributed largely to make the early Kentucky decisions outrank those of any State in the union, and to elicit from Chancellor Kent the very highest commendations.

JESSE BLEDSOE.

Judge Jesse Bledsoe received his appointment in 1822 from Governor Adair. He was born April 6, 1776, in Culpepper County, Virginia. His father, Joseph Bledsoe, was a Baptist preacher. In his early life Judge Bledsoe was quite delicate—so much so that he was denied the privilege of an early scholastic training. When quite young, in company with a younger brother, he moved to Lexington, where his health so rapidly improved that he was enabled to take a regular course at Transylvania University, and, although denied the

early advantages of a school training, by force of sheer application and intellect, he became one of the best classical scholars of Kentucky, and to the day of his death delighted in reading the old Greek and Roman classics. At the completion of his studies he began the practice of law, and was admitted to the bar at the March term, 1798, of the Lexington District Court. He repeatedly represented Fayette and Bourbon Counties in the Legislature, and was active in securing what he considered the best legislation for the good of the State. He was appointed Secretary of State by Governor Scott, and was United States Senator during the war of 1812, but resigned before the expiration of his term. Upon his return to Kentucky he resumed the practice of law in Paris, until his appointment as circuit judge. He then removed to Lexington, and was for a time professor of law in Transylvania University. These positions he held for five or six years, when he resigned both and again resumed the practice of law. In 1833 he moved to Mississippi and two years later to Texas, where for a while he seems to have drifted into the ministry, in which position he displayed no less capacity than he had at the bar. Judge Bledsoe was an intense "new court" supporter, and upon one occasion, while holding court in Georgetown, refused to permit the late Madison Johnson to be sworn in as a practicing attorney for the reason that his license was signed by the judges of the "old court," remarking his court recognized no such tribunal. Judge Bledsoe was a man of force and ability, and one of the foremost forensic debaters of his time. It was said by Mr. Clay that he had found Judge Bledsoe the strongest advocate he had ever opposed. He seems to have been singularly restless and discontented, resigning almost every position to which he was elected or appointed. At the time of his death in 1836, he was engaged in writing a history of the Republic of Texas, which was never completed.

T. M. HICKEY.

Judge Hickey was a man of far more than ordinary ability. For a number of years before his appointment as judge he was associated in practice with Robert N. Wickliffe, as partner, and commanded a very large and paying practice, which of itself in that day of giants, was sufficient evidence of ability. His wife was the widow of Judge Barry, and survived him several years. Judge Hickey was the successor upon the bench of Judge Bledsoe, which position he held until 1836. While acting as judge he acquired a national reputation for refusing to grant a mandamus to Mirus W. Dickey, who sought to compel the directors of the Maysville and Lexington Turnpike Company to permit his stages to pass over the road free of toll, because he carried the United States mail. He was a man of very strong convictions, and on one occasion sent his entire grand jury to jail because they refused to indict a number of prominent citizens for indulging in a quiet game of "draw," most prominent among whom were several members of the imprisoned grand jury. Judge Hickey was also for a while identified with the great Lee and Breckenridge suit, as the lawyers have come to style it, which was brought in 1803, for a trivial amount, and was finally disposed of by former Judge Morton. In the progress of this very remarkable suit, which rivals *Jaundice vs. Jaundice*, there were connected with it, as judge and attorneys, some of the most prominent attorneys of Kentucky, such as John Breckenridge, George Nicholas, Henry Clay, John Allen, Benjamin Mills, George Robertson, Jesse Bledsoe, Judge Hickey, Judge Goodloe, Madison C. Johnson, John C. Breckenridge, F. K. Hunt, J. B. Beck, Robert Wickliffe, Sr., Joseph R. Underwood, Judge Woolley, R. A. Buckner, G. B. Kinkead, General William Preston, James O. Harrison, Colonel R. W. Woolleey, John T. Shelby and Colonel Breckinridge. Such an array of talent was never

connected with any suit in the history of this country.

DANIEL MAYES.

Judge Mayes appears to have been a resident of Christian County, and represented that county in the legislature in 1825. In 1837 he was appointed judge of the circuit court, but resigned a short time after, and removed to Jackson, Miss., where he died in 1844. He was for many years professor of law in Transylvania University. He suffered from the infirmity of stammering in ordinary conversation, but when aroused could speak most fluently and efficiently. He was one of the foremost of the celebrated lecturers at Transylvania, which for many years enjoyed the reputation of being the foremost law school of the West. He married the widow of Charles Humphreys, well known to the citizens of this county. For clear, clean-cut, analytical argument, Judge Mayes was the equal of any lawyer of his day.

AARON K. WOOLLEY.

Aaron Kitchell Woolley was born in Springfield, N. J., January, 1800, and was the son of a revolutionary patriot. He received his early training at West Point, graduating at the head of his class. Such was the distinction with which he was graduated the faculty tendered, and he accepted, the position of assistant professor of mathematics. He held this position for two years, when he resigned. He naturally inclined toward the law, and immediately upon leaving West Point, began the study of law at Pittsburg with the Hon. Richard Biddle, brother to the celebrated Nicholas Biddle, president of the old United States Bank of Andrew Jackson fame. Judge Biddle was one of the ablest and, at that time, most celebrated jurists in America. As had done many another northern youth, young Woolley sought his fortune in the south, and at the age of 23 settled at Port Gibson, in Mississippi. At

the age of 27, in company with a friend whose relatives resided in Lexington, young Woolley spent his summer holidays in Lexington, and here met, won and married Sarah Howard Wickliffe, eldest daughter of Robert Wickliffe, and the niece of Benjamin Howard, before mentioned. Soon after his marriage he settled in Lexington and became the law partner of Mr. Wickliffe, his father-in-law. For two years, 1832-34, he represented Fayette County in the lower house of the Kentucky legislature, and for four years, 1835-39, in the Senate. He was then appointed circuit judge of this district, succeeding Daniel Mayes, which position he filled for about five years, when he grew tired and resigned. The late R. A. Buckner, was commonwealth's attorney during the period Judge Woolley presided. From this association there grew up between them quite an attachment, and when Judge Woolley resigned he made a personal appeal to the Governor to appoint Judge Buckner as his successor. For some years he and Judge Robertson and Thomas A. Marshall were law professors at Transylvania University. In 1849 he was a candidate on the pro-slavery ticket for delegate from Fayette County to the constitutional convention of that year, and was opposed to the election of judges by the people. That was a memorable campaign—one in which every shade of political opinion was represented. There were Whigs, Emancipationists, Pro-Slavery Democrats, Independents and Locofocos. The elections then were held in August, and but a few weeks before the canvass closed an epidemic of cholera, more fatal than any previous visitation, spread its pall over the entire community. Among its victims was Judge Woolley, on August 3, just three days before the election. The Pro-Slavery ticket was elected, and had he lived, Judge Woolley would have been a member of that convention. No member of that convention was better equipped for the position than he, and his untimely death was a loss to the entire State. As an

expounder of law, he probably surpassed any of the distinguished professors of Transylvania. It was said of him by the late Senator Beck that he had the finest legal mind of any man he had ever met, and that as a lawyer he was even superior to Blackstone. He was richly endowed with a clear, analytical mind, which reasoned to a legal conclusion with the accuracy of a geometrical demonstration, and in the art of imparting knowledge excelled all others. As a judge, both in dignity and ability, he was a fit associate with any that ever graced a Kentucky bench. In conversation he charmed and delighted, with irresistible power, all who came under the spell of his voice and presence, possessing to a rare degree those indefinable gifts of nature which enabled him to pass from the didactic to the playful, from the humorous to the sublime, with an ease and grace equaled only by the movement of the mind itself. At the time of his death, the Cincinnati Chronicle, one of the leading papers of the west, thus referred to his untimely taking off:

“Judge Woolley was a distinguished ornament of the bench and bar of Kentucky. As a lawyer he had few equals, if any superiors, possessing an intellect of extraordinary clearness, comprehensiveness and practical power. He served with distinction in both branches of the Legislature, as a judge of the circuit court and as a professor of law in the Kentucky University. In his social character he was one of the most fascinating and popular men of his time—his colloquial powers being equally brilliant and solid, and his bon hommie manners irresistibly charming.”

R. A. BUCKNER.

One of the very ablest of the old constitutional judges was the late R. A. Buckner. Judge Buckner was a son of the Hon. Richard A. Buckner, of Green County, who was appointed associate justice of the Supreme

Court by Governor Metcalfe, in 1831, and who was the Whig candidate for Governor in 1832 against John Breathitt, but was defeated by a very small vote, after one of the most exciting contests in the history of the State. He was six years a member of Congress, and as a lawyer ranks among the ablest of the Kentucky bar.

Richard A. Buckner, Jr., was born in Green County December 3, 1810. He was educated at Centre College and St. Joseph's Academy, of Bardstown. For a while he read law with his father, and graduated at Transylvania Law School in the class of 1837. He at once located in Lexington, and was soon the master of a large and lucrative practice. At the early age of 25 he was appointed commonwealth's attorney for this district, and rapidly won distinction as a most able and fearless prosecuting attorney. Upon the resignation of Judge Woolley, while yet commonwealth's attorney, and before he had reached the age of 30 years, he was appointed circuit judge by Governor Letcher, which position he held for nine years, refusing to be a candidate before the people after the adoption of the new constitution. He remained in the practice until 1859, when the people of Fayette County forced upon him a seat in the lower house of the legislature. In 1861 he was elected speaker, and was one of the ablest that has ever presided over that body. He was an intense Union man, and to him, more than any other one person, is due the course taken by Kentucky at that critical period in our history. After the war he devoted himself exclusively to the practice of his profession. His career as judge was marked by one of the most celebrated murder trials in the history of the State, at the outcome of which the populace was wrought up to such a frenzy that the judge was hung in effigy, as well as most of the jury. The bar, however, unanimously came to his support, and indignantly denounced the unwarranted and indiscreet action of the people.

Judge Buckner never sought office after the celebrated canvass of 1868, in which he was defeated by Brutus J. Clay. He was not an ambitious man, and could never bring himself to adopt the ways of the politician. During the latter part of his life he appeared to live entirely apart from his surroundings, in conversation always separating himself from the events that were transpiring around him. His mind constantly reverted to those days in which he had been such an important actor, and when in one of those happy, reminiscent moods he was the most delightful and captivating of men.

He died February 17, 1900, in this city, and was the very last one of that distinguished class of lawyers to which he belonged. His death was the occasion of Senator Lindsay observing that if such men as he had been in charge such conditions as have recently existed in Kentucky would have been impossible. One who knew him intimately and was personally very fond of him, thus wrote of him at the time of his death :

"In the death of Judge Richard A. Buckner, the Lexington bar has lost its oldest and most distinguished member, and Lexington one of the ablest and most conspicuous of her citizens, whose learning, character and service have crowned her with honor. He made a great judge, he was one of the very ablest and purest judges that ever adorned the bench of Kentucky. * *

* * His courage was dauntless and his self-possession unlimited ; and he presided with a dignity that has never been surpassed. He was always a leader at the bar. He ranked with Madison C. Johnson, Frank K. Hunt, John B. Huston, James B. Beck, John C. Breckenridge, George B. Kinkead, and divided with them both the rewards and the triumphs of the forensic triumphs that made them famous ; and he was a foeman worthy of the steel of the most expert and ablest. At times he was extremely forcible, with an impressive manner, a classic diction and a

chivalrous bearing that rendered him the equal of any member of this historic bar. He was master of the science of law, of jurisprudence as a noble science rather than a means of livelihood, and when aroused his legal arguments were terse, able and powerful. He was careful never to trespass upon another; no one ever trespassed upon him more than once. He was stainless in his professional life and dealings. When we recall the names of his associates and competitors, and among them that he early won eminence; that he was held by them worthy to be their judge; that he disputed with varying fortunes, but often with triumph, for the honors of the bar, it will be realized that it is not flattery to say that he was full worthy to be ranked with the ablest, the most eminent, the most upright of his compeers."

W. C. GOODLOE.

Judge William C. Goodloe was the last of the appointive and the first of the elective judges. He served for a short time by appointment, but upon the adoption of the new constitution, which inaugurated the elective system, he was elected as first judge under the new order of things. Many new and intricate questions of constitutional interpretation arose during the first few years of his judgeship, but in all of them he acquitted himself with credit. Judge Goodloe was twice elected by the people, serving until 1868, when he was defeated by Judge Thomas. In point of time Judge Goodloe was the oldest judge who sat upon the bench, having served this district as judge for seventeen years. He lived but two years after his defeat, and during that time was professor of law in Transylvania University. Judge Goodloe was a native of Madison County, and was born October 7, 1805. He graduated at the Transylvania Law School in 1824, and immediately began the practice of law at Richmond, and was soon thereafter appointed commonwealth's attorney

by Governor Metcalfe. In 1826 he married Miss Almira, daughter of Governor Owsley. Judge Goodloe was a man of great executive ability, and was remarkable for the promptness with which he dispatched business. His conclusions were quickly arrived at and just as quickly imparted. He served during the most critical period of the State's history, and while an intense partisan, he so conducted his court that as little of the animosities of the period as possible were engendered. However much others may have differed in conviction, no one ever for a moment questioned his integrity, and he will rank with the long line of judges that have so ably filled the Fayette bench. Justice Samuel F. Miller, of the Supreme Court, said of Judge Goodloe that he was the ablest *nisi prius* judge in America.

CHARLES D. THOMAS.

Judge Charles D. Thomas was born in 1823. After completing his school education he studied law and began the practice of his profession in Lexington. From his early childhood he was so disposed in manner that he attracted friends who remained such for all time. At the beginning of the Civil War he was among the first to enlist, and served with distinction through that unhappy conflict. Returning to Lexington he resumed the practice of law, and in 1868 was nominated by the reconstruction Democrats against Judge Goodloe, and was elected after a very hotly contested canvass. He was upon the bench for about five years, dying before the expiration of his time. On Saturday preceding his death, he was in apparent good health, but on Sunday was taken suddenly ill and died within a few hours thereafter. His death occurred on December 16, 1873. Mr. James O. Harrison, who knew him well, thus referred to him at the time of his death :

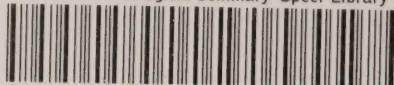
“Unyielding in the performance of what he conceived

to be his duty—uncompromising in the maintenance of what he believed to be the right—fearless in his own conscious rectitude, and inflexible in his loyalty to his own convictions, he so bore himself during his arduous career upon the bench as to inspire in all who knew him the most perfect confidence in his incorruptible integrity. His strong friendships—and no man ever had stronger—never warped his official opinions, and no breath of suspicion ever tainted his judicial decisions with the fault that they were dictated by his prejudices or influenced by his passions.”

Back to the dust, “whence they sprung,” they have all passed. Noble in the conception of what was duty, and brave in its performance, they have all been summoned to appear before the bar of that inexorable court from whose decrees no error lies, and from whose judgments there is no appeal. Their mortal forms, with which the elements have long since mixed, must soon from the memory of the quick forever pass, but so long as we shall remain a liberty loving and a law-abiding people so long will their names remain as monuments to regnant law and established order. In the Court of Grand Assize, o’er which Remorseless Time presides, the final orders have been entered, and the last sentence executed. Whether those “strong and subtle energies,” which here gave them such distinguished pre-eminence, yet serve them in the presence of some higher court; whether those “trained and quickened faculties” yet contend for supremacy in some greater forum; whether in some court of Last Resort, before the Great Chancellor of the Universe, they have long ago appeared, or back to dreamless dust have passed, lies yet beyond the impenetrable veil.

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